

Exhibit 1

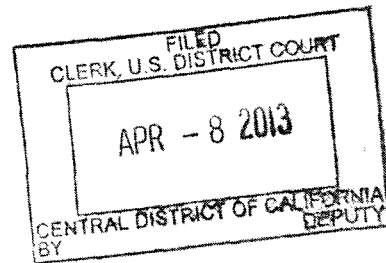
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**IN THE UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

DANA BOSTICK, a California citizen,
 on behalf of himself and all others
 similarly situated, and on behalf of the
 general public,

Case No.

CV13-02488

PA
(RZx)

**CLASS ACTION COMPLAINT
 DEMAND FOR JURY TRIAL**

PLAINTIFF,

vs.

HERBALIFE INTERNATIONAL OF
 AMERICA, INC., a Nevada
 Corporation, HERBALIFE
 INTERNATIONAL, INC., a Nevada
 Corporation, HERBALIFE, LTD a
 Cayman Island Corporation,

DEFENDANTS.

INTRODUCTION TO THE CASE

1. Herbalife told Dana Bostick that if he "put in the time, effort, and commitment," he could make money from retail sales and, by recruiting others to become Herbalife distributors, he could make money off them. Bostick paid Herbalife \$95.95 and became a distributor. He ordered Herbalife products – enough products that he jumped up the chain and qualified for additional discounts and commissions from potential recruits' purchases.

2. Bostick did not make money as promised. Like the hundreds of thousands of Herbalife distributors before and after him, Bostick failed. He failed even though he was committed and put in the time and effort. He failed because he was doomed from the start. He was doomed from the start by an Herbalife marketing plan that systematically rewards recruiting over retail sales. A marketing plan that for every dollar that Bostick and other distributors pay for Herbalife product Herbalife pays \$0.46 to \$0.64 cents in recruiting rewards, regardless of distributors' retail sales. A marketing plan that pays millions to those few at the top in recruiting rewards at the expense of the many at the bottom.

TYPE OF ACTION

PARTIES

6. Defendant Herbalife International of America, Inc. is and at all material times was a Nevada corporation headquartered in Los Angeles. Defendant Herbalife International of America, Inc. is a wholly-owned subsidiary of Herbalife

1 International, Inc. and an indirectly wholly-owned subsidiary of Herbalife, Ltd, and
2 is employed by those entities to conduct their U.S. operations.

3 7. Defendant Herbalife International, Inc. is and at all material times was
4 a Nevada corporation headquartered in Los Angeles. Herbalife International, Inc. is
5 an indirect wholly-owned subsidiary of Herbalife Ltd. Herbalife International, Inc.
6 was the former parent company of “Herbalife” but it and its subsidiaries were
7 acquired on July 31, 2002 by an entity that became Herbalife Ltd. Herbalife Ltd.
8 employs Herbalife International, Inc. to manage its global marketing company.

9 8. Herbalife Ltd. is “one of the largest network marketing companies in
10 the world.” Herbalife Ltd. is and at all material times was a corporation organized
11 under the laws of the Cayman Islands with its corporate headquarters in Los
12 Angeles. Herbalife Ltd. is a publicly held corporation traded on the NYSE as
13 “HLF.” Herbalife Ltd. is the architect, implementer, and operator of a global
14 enterprise that is and has been an illegal and fraudulent pyramid scheme, the
15 “Herbalife Pyramid.”

16 9. Although the three entities are legally distinct and have distinct roles
17 within the Herbalife Pyramid, in Herbalife’s dealings with Bostick and the Class,
18 Herbalife generally does not distinguish between the three corporate entities but
19 instead refers to itself singularly as “Herbalife.” This Complaint, therefore, also
20 refers to Herbalife Ltd., Herbalife International, Inc., and Herbalife International of
21 America, Inc. collectively as “Herbalife.”

22 10. John Tartol, an Herbalife Chairman’s Club member, is a California
23 resident. Leslie Stanford, an Herbalife Founder’s Circle member, is a Colorado
24 resident. Geraldine Cvitanovich, an Herbalife Founder’s Circle member, is a Hawaii
25 resident. Susan Peterson, an Herbalife Founder’s Circle member, is a Colorado
26 resident. Doran Andre is an Herbalife Chairman’s Club member. Maurice Smith, an
27 Herbalife President’s Circle member, is an Arizona resident.

28

1 11. Tartol, Stanford, Cvitanovich, Peterson, Andre, Smith, and other
2 President's Circle, Founder's Circle and Chairman's Club members were at all
3 relevant times, primary beneficiaries and promoters of the Herbalife scheme, the
4 **"Beneficiaries and Promoters."**

5 **JURISDICTION AND VENUE**

6 12. Defendants Herbalife International, Inc., Herbalife International of
7 America, Inc., and Herbalife Ltd. are subject to the jurisdiction of this Court. They
8 have been engaged in continuous and systematic business in California. Defendants
9 have designated agents for service of process in this State or have their principal
10 place of business here and have committed tortious acts in this State. Plaintiff
11 Bostick is a resident of California.

12 13. Because Bostick asserts claims under the Racketeer Influenced
13 Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961 – 1968, this Court has
14 jurisdiction over this action under 28 U.S.C. § 1331. This Court may exercise
15 supplemental jurisdiction over the state law claims under 28 U.S.C. § 1367.

16 14. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c) and
17 18 U.S.C. § 1965(a) and (b) because a substantial number of the acts and
18 transactions that established the claims of the Plaintiff and the class occurred within
19 this District. Defendants conducted business, solicited business, and transmitted
20 communications by mail or wire relating to the illegal scheme in this district.
21 Defendants transacted their affairs, resided within California and this judicial
22 district, and Defendants' wrongful acts occurred in this District and have directly
23 impacted the general public of this district.

24 15. Bostick and the class have also executed an "Agreement of
25 Distributorship" with Herbalife, which requires all claims to be "resolved
26 exclusively in a judicial proceeding in either the Superior Court or the United States
27 Court, both located in Los Angeles, California."

28 **THE LAW**

1 16. In *Webster v. Omnitrition Int'l. Inc.*, the Ninth Circuit adopted the
2 “*Koscot* test” for determining what constitutes a pyramid scheme:

3 Pyramid schemes are “[s]uch contrivances . . . characterized by the
4 payment by participants of money to the company in return for which
5 they receive (1) the right to sell a product and (2) the right to receive
in return for recruiting other participants into the program rewards
which are unrelated to sale of the product to ultimate users.”

6 *Webster v. Omnitrition Int'l. Inc.*, 79 F.3d 776, 781 (9th Cir. 1996) (“*Omnitrition*”)
7 quoting *In re Koscot Interplanetary, Inc.*, 86 F.T.C. 1106, 1181 (1975), *aff’d* mem.
8 sub nom. (“*Koscot*”).

9 17. The second element of the *Koscot* test is the determining
10 element for a pyramid scheme:

11 The satisfaction of the second element of the *Koscot* test is the *sine*
12 *qua non* of a pyramid scheme: “As is apparent, the presence of this
13 second element, recruitment with rewards unrelated to product sales,
14 is nothing more than an elaborate chain letter device in which
individuals who pay a valuable consideration with the expectation of
recouping it to some degree via recruitment are bound to be
disappointed.”

15 *Omnitrition*, 79 F.3d at 782. The Ninth Circuit held that “the operation of a pyramid
16 scheme constitutes fraud for purposes of several federal antifraud statutes.” *Id.*

17 18. A multi-level sales organization where members obtain monetary
18 benefits primarily from the recruitment of new members rather than from selling
19 goods to *bona fide* consumers is an endless chain scheme. Endless chain schemes
20 are inherently deceptive because most participants are doomed to failure, even if
21 some retail sales occur:

22 “The promise of lucrative rewards for recruiting others tends to induce
23 participants to focus on the recruitment side of the business at the
24 expense of their retail marketing efforts, making it unlikely that
25 meaningful opportunities for retail sales will occur.” Thus, the fact
that some retail sales occur does not mitigate the unlawful nature of
the overall arrangement.

26 *Omnitrition*, 79 F.3d at 782, citing *In re Ger-Ro-Mar Inc.*, 84 F.T.C. 95, 148-49
27 (1974), *rev’d* on other grounds, 518 F.2d 33 (2d Cir. 1975).

28 19. “Like chain letters, pyramid schemes may make money for those at

1 the top of the chain or pyramid, but ‘must end up disappointing those at the bottom
2 who can find no recruits.’” *Omnitrition*, 79 F.3d at 781 (quoting *Koscot*, 86 F.T.C.
3 1106, 1181 (1975), *aff’d mem. sub nom., Turner v. F.T.C.*, 580 F.2d 701 (D.C. Cir.
4 1978)).

5 20. Endless chain schemes are inherently fraudulent by nature because the
6 futility of the plan is not apparent to the participant:

7 Misrepresentations, knowledge and intent follow from the inherently
8 fraudulent nature of a pyramid scheme as a matter of law. As to
9 justifiable reliance, the very reasons for the *per se* illegality of Endless
Chain schemes is their inherent deceptiveness and the fact that the
“futility” of the plan is not “apparent to the consumer participant.”

10 *Omnitrition*, 79 .3d at 788 (citations omitted).

11 21. Section 327 of the California Penal Code prohibits endless chains:

12 Every person who contrives, prepares, sets up, proposes, or operates
13 any endless chain is guilty of a public offense, and is punishable by
14 imprisonment in the county jail not exceeding one year or in state
prison for 16 months, two, or three years.

15 As used in this section, an “endless chain” means any scheme for the
16 disposal or distribution of property whereby a participant pays a
valuable consideration for the chance to receive compensation for
17 introducing one or more additional persons into participation in the
scheme or for the chance to receive compensation when a person
introduced by the participant introduces a new participant.

18 Compensation, as used in this section, does not mean or include
19 payment based upon sales made to persons who are not participants in
the scheme and who are not purchasing in order to participate in the
20 scheme.

21 22. In *Herbalife International of America, Inc. v. Ford et al*, Central
22 District Court, Case No. 2:07-cv-02529-GAF-FMO, Herbalife sued distributors
23 leaving Herbalife. Those distributors counterclaimed against Herbalife, claiming
24 that the Herbalife Sales and Marketing Plan was an “endless chain” under
25 California Penal Code §327. The Court denied Herbalife’s motion for summary
26 judgment on the distributors’ endless chain-scheme counterclaim, finding that there
27 was:

28 a genuine issue as to whether Herbalife distributors must pay
Herbalife to become supervisors—a threshold requirement under the

1 Koscot analysis—precludes the Court from granting summary
2 judgment for either side on the endless-chain-scheme claim. As noted
3 above, Herbalife's Sales and Marketing Plan provides that a
4 distributor may qualify to become a Supervisor by achieving 4,000
5 Volume Points in a given month or 2,500 Volume Points in each of
6 two consecutive months. A minimum of 1,000 of these Volume Points
must consist of Unencumbered Volume, while the rest may consist of
Encumbered Volume. Because both Unencumbered Volume and
Encumbered Volume may consist of volume purchased not by the
distributor herself but those in her downline, a distributor could
qualify to become a Supervisor without purchasing anything.

7 Moreover, in the Court's view, Herbalife's entire business model
8 appears to incentivize primarily the payment of compensation that is
9 "facially unrelated to the sale of the product to ultimate users because
10 it is paid based on the suggested retail price of the amount ordered
11 from [Herbalife], rather than based on actual sales to consumers."
12 *Omnitrition*, 79 F3d at 782 (emphasis and internal quotation marks
omitted). Nevertheless, the conflicting evidence before the Court is
sufficient to create a triable issue regarding the "payment of money"
element of the Koscot analysis that only the trier of fact may resolve.
Accordingly, the parties' cross-motions for summary judgment are
DENIED as to the endless-chain-scheme claim

13 *Herbalife International of America, Inc. v. Ford et al*, Central District Court, Case
14 No. 2:07-cv-02529-GAF-FMO, "Memorandum and Order Regarding Cross-
15 Motions for Summary Judgment," [Docket No. 374], 8/25/2009.

16 FACTS

17 SUMMARY OF FACTS

18 23. From 2009-2012, Herbalife made disclosures of "Statements of
19 Average Gross Compensation of U.S. Supervisors" that were deceptive and
20 misleading as to the likelihood that a distributor could reach the level of Supervisor
21 and earn money from the scheme. Herbalife included these disclosures in the Sales
22 and Marketing Plan received by Bostick and the class. Herbalife also posted these
23 disclosures online. None of these disclosures provided any information that would
24 allow a potential or actual distributor to meaningfully evaluate their likelihood of
25 success in the scheme. Copies of the 2009-2012 disclosures are attached as **Exhibit**
26 **A** and are referred to as the "**2009-2012 Statements**"

27 24. As recently disclosed by Herbalife in their February 2013 Statement
28 of Average Gross Compensation Paid by Herbalife to United States Distributors in

2012 (attached as **Exhibit B**, and referred to as the “**2013 Statement**”) the majority of Herbalife’s U.S. distributors earn nothing from Herbalife. In 2012, Herbalife’s real business opportunity was:

- a. Herbalife paid nothing to over 87.9% of all distributors;
- b. Herbalife paid \$1 to \$1,000 to 8.43% of all distributors;
- c. Herbalife paid \$1,001 to \$5,000 to 2.2% of all distributors;
- d. Herbalife paid \$5,001 to \$10,000 to 0.5% of all distributors;
- e. Herbalife paid \$10,000 to \$25,000 to 0.393% of all distributors;
- f. Herbalife paid \$25,001-\$50,000 to 0.230% of all distributors;
- g. Herbalife paid \$50,000-\$100,000 to 0.109% of all distributors;
- h. Herbalife paid \$100,001-\$250,000 to 0.092% of all distributors; and
- i. Herbalife paid more than \$250,000 to 0.039% of all distributors.

25. These real numbers are in direct contrast to the deceptive earning claims referenced in Herbalife’s promotional materials, including videos on Herbalife’s website, YouTube, and Herbalife distributor’s websites, often featuring the Beneficiaries and Promoters, and Herbalife’s prior Statements of Average Gross Compensations distributed to Bostick and the class.

26. An undisclosed fact is that there is little to no opportunity for an Herbalife distributor to earn a “retail profit” on the sales of Herbalife products because Herbalife sets the “Suggested Retail Price” (“**SRP**”) at a price so high that few if any Herbalife distributors can earn retail profits.

27. Herbalife sets the SRP so high because for every dollar a distributor pays Herbalife for Herbalife product (not including packaging, handling, shipping, and tax) Herbalife pays out \$0.46 to \$0.64 to its top distributors as recruiting bonuses. Herbalife makes these payments upline whether the distributor sells the product at retail and whether the distributor sells the product at SRP.

28. Besides setting the SRP at an inflated price, Herbalife charges its distributors a 7% fee for “Packaging and Handling” and a 2.5% to 4% fee for

1 shipping, based solely on the inflated SRP and not on Herbalife's actual or
2 estimated costs for packaging, handling, and shipping. This makes it even harder for
3 a distributor to make retail profits as it drives their retail price even higher.

4 29. An undisclosed fact (from at least April 2009 to February 2013) is that
5 a large majority of all distributors (approximately 71%) make few if any retail sales
6 and are forced to self-consume the Herbalife products.

7 30. An undisclosed material fact is that the vast majority of participants in
8 Herbalife's Pyramid scheme drop out within one year of becoming Herbalife
9 distributors and have usually lost most, if not all, of their investment and thousands
10 of dollars expended to build their supposed "business opportunity."

11 31. To avoid being a pyramid scheme, a multi-level marketing plan must
12 have effective provisions to ensure that its distributors sell most products to
13 consumers not a part of the marketing system. Herbalife does or did not employ or
14 enforce such provisions.

15 THE HERBALIFE SALES AND MARKETING PLAN

16 32. As a direct-sales company, Herbalife operates a multi-level
17 distribution system – the Herbalife Sales and Marketing Plan – relying on
18 individual distributors to market, promote, and sell its products.

19 33. A copy of the Herbalife "Sales and Marketing Plan and Business
20 Rules" ("**Sales and Marketing Plan**") purchased by Bostick as part of his
21 International Business Pack is attached as **Exhibit C**. The Sales and Marketing Plan
22 is an incredibly complex set of rules and regulations.

23 34. Anyone can become an Herbalife distributor if they purchase an
24 Herbalife International Business Pack ("**IBP**") or a mini-IBP at a cost of \$95.95 or
25 \$57.75 respectively, apply to become a distributor, and are sponsored by an existing
26 Herbalife distributor.

1 35. Herbalife recruits prospective participants by offering them the
2 opportunity to participate in a “tested proven business plan” “designed to maximize
3 rewards for effort and provide substantial and ongoing income.”

4 36. Herbalife recruits prospective participants by promising them
5 “Immediate Retail Profit,” “Daily Wholesale Profit,” “Monthly Override Income,”
6 “Monthly Production Bonuses,” “Annual Bonuses” for Top Achievers, and “Special
7 Vacations and Training Events” that will “teach you how to meet your goals,
8 increase your earning power and build an international business without leaving the
9 comfort of your own home!”

10 37. Herbalife’s distributors promise recruits and other distributors that
11 they can “be your own boss – take charge of your life,” achieve “financial
12 freedom,” earn “extra income,” “retirement/pension,” and “leave a legacy.”

13 38. Herbalife recruits prospective participants by boasting that the
14 Herbalife Sales and Marketing Plan is “[t]he best Marketing Plan in the industry”
15 and that it pays out up to 73% of product revenues to distributors in “Retail and
16 Wholesale Profits, Royalty and bonus income and incentives.” Herbalife stresses:

17 Each Distributor’s success is dependent on two primary factors: The
18 time, effort and commitment a Distributor puts into their Herbalife
19 business and the product sales made by a Distributor and their
20 downline organization. These two factors raise the importance of a
Distributor’s responsibility to train, support and motivate their
downline organization.

21 39. Herbalife divides the “73% of product revenue” by apportioning 23%
22 of the SRP to “Royalty, bonus income, and incentives” and 50% to “Retail and
23 Wholesale Profits” Herbalife’s 73% payout claim depends on a distributor reselling
24 the product at 100% of the SRP.

25 40. By basing these “Retail and Wholesale Profits, Royalty and bonus
26 income and incentives” off the SRP, Herbalife masks that for every dollar the
27 purchasing distributor spends on Herbalife product, Herbalife pays from \$0.46 to
28 \$0.64 upline in the form of recruiting rewards.

1 41. Because so much money is paid upline in recruiting bonuses so that
2 Herbalife can retain its “most active and productive distributors,” Herbalife’s SRP
3 is an inflated price that bears no relation to the actual market price distributors can
4 get for Herbalife’s products in sales to retail customers.

5 **BOSTICK IS RECRUITED TO HERBALIFE**

6 **“Position Determines the Pay,” “You Determine Your Position”**

7 42. Dana Bostick responded to an internet advertisement for a “trial
8 offer.” It offered an “Internet Business Starter Pack” where Bostick paid \$9.95 in
9 Shipping and Handling and would be charged an additional \$39.95 if he did not
10 return the package within fourteen days. Interested in earning monthly and residual
11 income, Bostick signed up for the pack. The Internet Business Starter Pack was
12 mailed to Bostick sometime between late-March and early-April 2012.

13 43. Bostick reviewed the pack, which is attached **Exhibit D**, and the DVD
14 video enclosed in that pack, which revealed the “business” as Herbalife.

15 44. Bostick watched the DVD. A spokeswoman explained that within
16 Herbalife, “the position determines the pay - meaning, the higher you start the more
17 money you can make.”

18 45. On the video, Beneficiary and Promoter Maurice Smith reiterates that
19 “position determines the pay” and that “you determine your position.” Smith tells
20 viewers that an average Herbalife distributor earns “between \$100 and \$300 per
21 month - part time.” And Success Builders “have the opportunity to earn between
22 \$400-\$600 - part time.” Smith encourages recruits to become a “Supervisor,” a
23 level in the Herbalife Pyramid that requires a significant purchase of product but
24 where distributors, if they have a downline, can start to earn recruiting rewards:

25 Supervisor is the highest level that you can choose to position yourself
26 at today. And, this is very important to know, Supervisor is the
27 gateway to the rest of the levels of the marketing plan. You cannot get
28 to the higher income levels without first becoming a Supervisor.

1 46. The graphics on the video display that Supervisors can earn between
2 \$500-\$1500 a month. Smith explains that a World Team member can earn \$1,500-
3 \$3000 a month, GET Team member can earn \$3,500-\$7,000 a month, Millionaire
4 Team can earn between \$7,500-\$15,000 a month, and President's Team members
5 typically earn between \$25,000-\$100,000+ a month. Images of Smith's presentation
6 and representations of potential distributor's earnings are attached as **Exhibit E**.

7 47. Smith explains why it is so important to become a Supervisor: "It's
8 the highest paying position that you can start at today. You've set yourself up for
9 retail profits of 50% so you've doubled your money for the same work you've been
10 doing." A Supervisor is at the "gateway to the rest of the marketing plan," because
11 Supervisors can begin to get royalties, production bonuses, spontaneous bonuses,
12 1% annual bonus pool, and paid vacations.

13 48. Bostick viewed this video, Herbalife's website, and various other
14 Herbalife related websites. Upon viewing these materials, Bostick believed that
15 retailing Herbalife products and recruiting distributors would be a way for him to
16 build a business where he could earn both monthly income and residual income.

17 49. Bostick ordered an IBP for \$95.95. It was sent to him by FedEx. The
18 IBP contained the magazine, *Live the Good Life! Herbalife* (relevant portions of
19 which are attached as **Exhibit F**) and four distributor workbooks: "Your Business
20 Basics" (relevant portions of which are attached as **Exhibit G** to the Complaint);
21 "Using and Retailing Your Products"; "Building Your Business" (relevant portions
22 of which are attached as **Exhibit H** to the Complaint); and the "Sales & Marketing
23 Plan and Business Rules" (Exhibit C). Bostick reviewed the IBP and the materials
24 in the IBP.

25 50. On April 6, 2012, Bostick went online and signed an Agreement of
26 Distribution. That agreement is attached as **Exhibit I**.

27 51. Bostick worked hard to build his business. He bought and used
28 products himself so he would know what he was selling. He set up three websites.

1 Two were set up to sell Herbalife products to the public and one was to recruit
2 downline distributors. He paid for “coaching” sessions where the coaches “taught”
3 him how to recruit downline distributors to build a downline. In spite of his hard
4 work, the only recruit he made was a long-time friend.

5 52. On April 6, and 26, 2012, May 21, 2012, June 18, 19, 22, and 27,
6 2012, and July 20, 2012, Plaintiff Bostick ordered products from Herbalife. Besides
7 the purchase price for product, Herbalife added a 7% “Packaging and Handling” fee
8 and a shipping fee of anywhere from 2.5% to 4%, solely based on the SRP of the
9 product and not on the actual or estimated costs.

10 53. On June 22, 2012, he attempted to “pay for his position” by
11 coordinating with his friend. They were supposed to both purchase enough product
12 to become a Supervisor, the “gateway to the rest of the marketing plan.” On June
13 22, 2012, he made a single order. That order cost him over \$1,800 for the product
14 alone. Bostick’s downline did not make the purchase and Bostick did not advance
15 to Supervisor.

16 54. When he tried to resell the product he purchased to qualify as a
17 Supervisor, Bostick learned that there was little opportunity for him to earn monthly
18 income or residual income with Herbalife. The SRP alone was an uncompetitive
19 price in the market, and, when Bostick would add the shipping, handling, and
20 packaging fees to recoup his costs, the retail price was so high that there were
21 virtually no retail purchasers willing to pay the full retail price. And other
22 distributors were selling Herbalife products online on Craigslist and EBay at or
23 below their cost, making retail profits in the amounts promised by Herbalife even
24 more almost impossible to achieve.

25 55. As to the over \$3,000 (SRP) worth of Herbalife products that Bostick
26 purchased that he has not self-consumed or given away to family members, Plaintiff
27 Bostick has tried to sell it on Craigslist at or around his purchase cost.
28

1 56. Bostick's experience is the same as most Herbalife distributors. As
2 Herbalife's 2013 Statement shows, most Herbalife distributors earn nothing from
3 Herbalife. Even if he would have qualified as a Supervisor, only 33% of Newly
4 Qualified Supervisors requalify.

5 57. Bostick's failure and the other distributors' failure are not for lack of
6 time, effort, and commitment to Herbalife. These failures are due to a marketing
7 plan that, by its design, systematically rewards recruiting over retailing and
8 systematically rewards those Beneficiaries and Promoters at the top at the expense
9 of the many distributors at the bottom.

10 **MECHANICS OF THE SALES AND MARKETING PROGRAM**

11 58. Within the Herbalife Pyramid, there are 11 levels of Herbalife
12 distributors. The bottom four categories are Distributors,¹ Senior Consultants,
13 Success Builders, and Qualified Producers. Herbalife calls the bottom four
14 categories "Non-Sales Leaders" ("NSL"). The top seven categories are Supervisors,
15 World Team, Global Expansion Team, Millionaire's Team, President's Team,
16 Chairman's Club, and Founders Circle. Herbalife calls these distributors "Sales
17 Leaders" ("SL"). Bostick was always an NSL.

18 59. Herbalife assigns a new distributor to an existing "line of
19 sponsorship" to which the recruiting distributor already belongs. A line of
20 sponsorship includes a hierarchy of distributors starting with the newly-recruited
21 distributor and proceeding by seniority up to a distributor heading the line of
22 sponsorship. These distributors at the heads of the lines of sponsorship are members
23 of the Founder's Circle and the Chairman's Club – Beneficiaries and Promoters.

24 60. Junior (or "downline") distributors purchase products from more
25 senior (or "upline") distributors within their line of sponsorship or from Herbalife
26 directly. Herbalife pays bonuses upline to distributors based on purchases from

27 ¹ The use of a lower-case "distributor" refers to all Herbalife distributors, regardless
28 of level. The use of a capitalized "Distributor" refers to the first-level Herbalife
distributor.

1 Herbalife by downline distributors. Any distributor at any level may sponsor new
2 distributors.

3 61. Herbalife protects its distributors' downlines. A distributor who wants
4 to change their sponsor must obtain a written, notarized release from their Sponsor
5 and upline distributors. Herbalife can still deny the request. The distributor
6 changing sponsors can only keep her downline if her upline agrees.

7 62. To move up the Herbalife Pyramid and qualify for higher levels of
8 compensation, Herbalife requires a distributor to "achieve" (either through their
9 own purchases of Herbalife products or through their downline's purchases)
10 specific "Volume" during specified time-periods.

11 63. Herbalife calculates a distributor's Volume by using "**Volume**
12 **Points.**" Volume Points are point values that Herbalife assigns to each of their
13 products. In the U.S., Herbalife uses a Volume Point to dollar ratio to assign Value
14 Points to specific products. It displays a product's Value Points on the price sheet.

15 64. For 2012, in the United States, the dollar to Volume Point ratio ranges
16 from \$1:0.57VP to approximately \$1:0.905VP. Most Herbalife Products in 2012
17 have a ratio of approximately \$1:0.905. In 2011, the average ratio was
18 approximately \$1:0.9167.

19 65. If a distributors order products the distributor collects "Personally
20 Purchased Volume" points.² The Volume Points that a distributor accumulates
21 either through Personally Purchased Volume and through the Volume Points
22 purchased by the distributor's downline become the distributor's sales production.
23 Herbalife uses Volume Points to qualify distributors for higher levels, sales
24 commissions, royalties, bonuses, and other incentives and benefits. Herbalife
25 calculates Volume Points monthly.

26
27 ² "**Personally Purchased Volume**" is defined as "The volume purchased directly
28 from Herbalife using your [the distributor's] Herbalife Identification Number." All
defined terms from the Sales and Marketing Plan are found on Exhibit C, pp. 21-22.

**NON-SALES LEADERS: DISTRIBUTORS, SENIOR
CONSULTANTS, SUCCESS BUILDERS, & QUALIFIED PRODUCERS**

Distributors (NSL)

66. Herbalife calls its first-level distributors “Distributors.”

67. A Distributor buys Herbalife products at a 25% discount off the SRP, whether for personal use or resale. In its promotional materials, Herbalife characterizes the 25% discount as an opportunity for the Distributors to earn 25% in retail profits from reselling the Herbalife products.

68. If a Distributor purchases a product with an SRP of \$100, the cost is \$75. Herbalife pays the Distributor’s upline \$48 of the \$75 cost – \$25 upline in “Wholesale Profits” and \$23 in Royalty Overrides, bonuses, and other incentives – even if the Distributor cannot resell the product for \$100.

69. For a Distributor’s purchase, \$0.64 out of every dollar paid for Herbalife product goes upline (\$0.33 in Wholesale Profits and \$0.31 in royalties, bonuses, and incentives).

Senior Consultants (NSL)

70. Herbalife promotes a Distributor to “Senior Consultant” if they buy 500 or more Personally Purchased Volume Points, or, if their recruited distributors provide 500 Volume Points in “Downline Volume.”³

71. Senior Consultants buy Herbalife product at a 35% discount off SRP and are eligible for a 10% commission off their downline Distributor’s purchases, so long as that distributor remains a Distributor. Herbalife calls this commission “Wholesale Profit.”

72. A Distributor can also qualify for Senior Consultant if the distributor gets 2,000 Volume Points in a month, either through Personally Purchased Volume or through Downline Volume. That Senior Consultant gets a 42% discount off of

³ **“Downline Volume”** is defined as “As a non-Supervisor, Downline volume is based on volume which is placed by your downline Distributors directly from Herbalife or order between 25% to 42% discount.”

1 SRP, both on the qualifying purchase and on purchases in the qualifying month.

2 The next month their discount is 35% off of SRP.

3 73. A Distributor can become a Senior Consultant without purchasing or
4 reselling Herbalife product if the Distributor recruits downline distributors and
5 those distributors purchase the required 500 or 2,000 Volume Points in a month.

6 74. If a Senior Consultant with a 35% discount purchases a product with
7 an SRP of \$100, the cost is \$65. Herbalife pays the upline \$38 of the \$65 cost – \$15
8 in “Wholesale Profits” and \$23 in Royalty Overrides, bonuses, and other incentives
9 – even if the Senior Consultant does not resell the product for a \$100.

10 75. For a Senior Consultant’s purchase with a 35% discount, \$0.58 out of
11 every dollar paid for Herbalife product goes upline (\$0.23 in Wholesale Profits and
12 \$0.35 in royalties, bonuses, and incentives).

13 **Success Builder (NSL)**

14 76. A Distributor or Senior Consultant becomes a “Success Builder” if the
15 distributor places a single order of 1,000 Personally Purchased Volume Points.
16 Success Builders get a 42% discount on that order and on other purchases in the
17 same month they qualify. A Success Builder becomes a Senior Consultant with a
18 35% discount the next month.

19 77. Herbalife and the Beneficiaries and Promoters encourage Distributors
20 to become Success Builders to get “higher retail profits” because of the discount. In
21 the video called “Senior Consultant & Success Builder,” which is hosted at
22 <http://www.youtube.com/watch?v=8b2pyw3A6FA> and on the official Herbalife
23 website www.video.herbalife.com, Beneficiaries and Promoters John Tartol and
24 Leslie Stanford encourage distributors to become Success Builders. Tartol explains
25 in minutes 5:20-6:18 how a distributor can “qualify right away” for a 35% discount
26 “with just one order” and “enjoy a substantial 42% discount immediately.” He tells
27 distributors that “this will get you the highest discount for the least expenditure.”

28 **Qualified Producer (NSL)**

1 78. A Distributor, Senior Consultant, or Success Builder becomes a
2 “Qualified Producer” if the distributor purchases 2,500 Personally Purchased
3 Volume Points within one to three months, or the distributor can combine up to
4 1,000 Downline Volume (Volume placed by downline distributors) Points and
5 1,500 Personally Purchased Volume Points in a single month.

6 79. A Qualified Producer gets a 42% discount off SRP for a full year and
7 qualifies for up to 7% to 17% of commissions on the Qualified Producer’s downline
8 distributors’ (below the level of Qualified Producer, Success Builder, or Senior
9 Consultant with a 42% discount) purchases.

10 80. If a Qualified Producer (or Senior Consultant or Success Builder) with
11 a 42% discount purchases a product with an SRP of \$100, the cost is \$58. Herbalife
12 pays the upline \$31 of the \$58 cost – \$8 upline in “Wholesale Profits” and \$23 in
13 Royalty Overrides, bonuses, and other incentives – even if the Qualified Producer
14 does not resell the product for \$100.

15 81. For distributors with a 42% discount, \$0.53 out of every dollar paid
16 for Herbalife product goes upline (~\$0.13 in Wholesale Profits and ~\$0.40 in
17 royalties, bonuses, and incentives).

18 82. According to Herbalife’s recently revised 2013 Statement,
19 Distributors, Senior Consultants, Success Builders, and Qualified Producers (all
20 NSLs) and Supervisors without a downline made up 83% of their total distributors
21 in 2012.

22 83. Unless an NSL is participating in the Herbalife Advantage Promotion
23 (an automatic monthly product shipment program) and has orders for 12
24 consecutive months, the NSL must pay an Annual Processing Fee of \$15.00 on their
25 “anniversary date” to remain an Herbalife distributor. Supervisors also must pay an
26 Annual Processing Fee of \$79.99. Herbalife has described this fee as necessary
27 because “The fee keeps you on our system by letting us know that you are still
28

1 enjoying working your Herbalife business. If it is not paid then your Distributorship
2 is subject to deletion.”

3 84. In Herbalife’s 2004 and 2005 10-Ks to investors, Herbalife disclosed
4 that for the reporting year, “more than 90% of our distributors that are not
5 supervisors turned over.” Herbalife stopped disclosing the turnover rate of Non-
6 Sales Leaders in their 10-Ks and never disclosed turnover rates of its NSL’s to
7 Bostick and members of the class. Based on the 2004 and 2005 disclosures and
8 Plaintiff’s own experience with distributors in his own upline and downline,
9 Plaintiff is informed and believes that the non-Supervisor turnover rate for 2009-
10 2013 is approximately 90%.

11 **SALES LEADERS: SUPERVISORS, WORLD TEAM, TAB TEAM,**
12 **PRESIDENT’S TEAM, FOUNDER’S CIRCLE, CHAIRMAN’S CLUB**

13 **Supervisor (SL)**

14 85. Becoming a “Supervisor” means a distributor moves from being what
15 Herbalife classifies as an “Non-Sales Leader” to a “Sales Leader,” or “SL.”

16 86. According to Herbalife’s Statements of Average Compensation
17 distributed in 2009-2012 (Exhibit A), approximately 25% of Herbalife’s
18 Distributors become Supervisors and above.

19 87. A distributor can qualify to become a Supervisor in one of three ways:

20 88. **One-Month Qualification** – by “achieving” 4,000 Volume Points in
21 a month. A minimum of 1,000 of these Volume Points must be “Unencumbered
22 Volume”⁴

23
24 ⁴ **“Unencumbered Volume”** is defined as “all volume produced by anyone in [a
25 distributor’s downline], down to the first qualified Supervisor who achieves less
26 than 2,500 Volume Points in one Volume Month,” plus all of the distributor’s
“Personal Volume,” and which is volume that is not used by anyone else for
Supervisor qualification purposes.

27 **“Personal Volume”** is defined as “The volume purchased by you as a Fully
28 Qualified Supervisor and all others in your downline organization, excluding any
50% orders by Qualifying Supervisors and Qualified Supervisors.”

1 89. **Two-Month Qualification** – by “achieving” 2,500 Volume Points in
2 each of two consecutive months. A minimum of 1,000 of these Volume Points must
3 be “Unencumbered.”

4 90. **Accumulated Qualification** – by buying 5,000 Personally Purchased
5 Volume Points within 12 months or 1,000 Downline Volume Points with 4,000
6 Personally Purchased Volume.

7 91. Under the One and Two Month Qualifications, a distributor can
8 qualify as a Supervisor without purchasing or reselling any Herbalife products if
9 1000 of the downline Volume Points are Unencumbered.

10 92. This was the problem identified by the Court in the *Herbalife*
11 *International of America, Inc. v. Ford et al* order described above: “Because both
12 Unencumbered Volume and Encumbered Volume may consist of volume purchased
13 not by the distributor herself but those in her downline, a distributor could qualify to
14 become a Supervisor without purchasing anything.”

15 93. A distributor can also qualify for Supervisor under any method
16 making no retail sales.

17 94. A distributor who does not become a Supervisor before their downline
18 distributor becomes a Supervisor has one year to become a Supervisor. Otherwise,
19 Herbalife takes away that Supervisor and that Supervisor’s downline from the
20 distributor and gives them to the first upline Supervisor.

21 95. Herbalife requires that a Qualifying Supervisor be sponsored by the
22 first upline Supervisor. The Sponsoring Supervisor must match the Qualifying
23 Supervisor’s Volume Points in the qualifying month with “Total Volume.”⁵

24 **“Encumbered Volume”** is all volume produced by any downline distributor
25 qualifying for Supervisor, down to the first qualified Supervisor, who achieves
26 2,500 Volume Points or more at a 25% to 42% discount in one Volume Month. The
27 basic difference between the two forms of volume is that Unencumbered Volume is
28 volume that no other distributor uses to qualify to become a Supervisor.

⁵ **“Total Volume”** is defined as “the combined total of Personal Volume plus
Group Volume.”

97. If the Supervisor sponsors a distributor who becomes a Supervisor that Supervisor is called a first-level Supervisor. If that first-level Supervisor sponsors a Supervisor that Supervisor becomes the original Supervisor's second-level Supervisor. If that second-level Supervisor sponsors a Supervisor that Supervisor becomes the original Supervisor's third-level Supervisor. Supervisors can earn royalties on all three of these downline level Supervisors' volume.

98. A Supervisor can purchase Herbalife's product at a 50% discount off the SRP and can earn from 25% - 15% - 8% in commissions from their downline's purchases. The commissions decrease as the Supervisor's downline distributors' discounts increase – 25% - 35% - 42%.

100. For a Supervisor's purchase, \$0.46 out of every dollar paid for Herbalife product goes upline in Royalty Overrides, bonuses, and other incentives.

102. A Royalty Override is a commission that a Supervisor receives on the Volume Points accrued by Supervisor's downline (the First, Second, and Third Level Supervisors). In its 10-Ks, Herbalife calls Royalty payments "compensation

21
COMPLAINT

to distributors for services rendered including the development, retention and the improved productivity of their sales organizations.”

103. The percentage (1%-5%) of Royalty Overrides that a Supervisor can earn depends on the number of Total Volume Points the Supervisor accumulates in that month. Supervisors can qualify for Royalty Overrides from their three levels of downline Supervisors. In their Sales and Marketing Plan, Exhibit C, p. 13, Herbalife illustrates Royalty Override as:

Royalty Override Sliding Scale		Royalty Override Example	
Your Total Volume Points	Royalty Override Earning %	YOU	2,500 Volume Points = Your Total Royalty Override = 1,500 Royalty Points
0-499	0%		
500-999	1%	First-Level Supervisor	10,000 Volume Points = 5% = 500 Royalty Points
1,000-1,499	2%		
1,500-1,999	3%	Second-Level Supervisor	10,000 Volume Points = 5% = 500 Royalty Points
2,000-2,499	4%		
2,500 plus	5%	Third-Level Supervisor	10,000 Volume Points = 5% = 500 Royalty Points

104. To qualify for Royalty Overrides, a Supervisor must certify that they comply with Herbalife’s “10-Retail Customer Rule” and “70% Rule.” Under these rules, a Supervisor “must personally make sales to at least 10 separate retail customers each month,” and “at least 70% of the total value of Herbalife products a Distributor purchases each Volume Month must be sold or consumed that month.” A copy of the Earnings Certificate form is found on page 48 of Exhibit C.

105. Herbalife Supervisors must requalify annually by paying the Annual Processing Fee and by meeting similar volume requirements as the original qualification requirements.

106. In Herbalife’s 10-Ks, Herbalife reported that for the years 2012, 2011, 2010, and 2009, its Sales Leader retention rate was approximately 51.10%, 48.6%, 43.3%, and 42.2%, respectively.

World Team (SL)

1 114. According to Herbalife's 2012 Statement, GET Team members have
2 an average annual earnings of \$22,766 and median compensation of \$19,417 in
3 payments from Herbalife.

4 **Millionaire Team (SL)**

5 115. If a Supervisor achieves 4,000 Royalty Override Points each month
6 for three consecutive months, Herbalife promotes that Supervisor to the Millionaire
7 Team the following month and, after a waiting period of two months, that
8 Millionaire Team member can earn a 2-4% monthly TAB Team bonus off the
9 downline's Organizational Volume. Millionaire Team members also get all the
10 benefits of being a Supervisor.

11 116. According to Herbalife's 2012 Statement, Millionaire Team members
12 earn an average of \$100,195 and median of \$97,303 in payments from Herbalife.

13 **President's Team (SL)**

14 117. Herbalife promotes a Supervisor who accrues 10,000 Royalty
15 Override Points in three consecutive months to the President's Team where, after a
16 waiting period of three months the President's Team member can earn a 2%-6%
17 Production Bonus.

18 118. To qualify for the President's Team, a Supervisor must accrue 20,000
19 to 50,000 Royalty Override Points in three months. The TAB Team bonuses range
20 from 2% to 7%, depending on the number of Royalty Override Points the
21 Supervisor accrues.

22 119. For all TAB Team members, the Production Bonus decreases from the
23 maximum percentage depending on whether there are other TAB Team members in
24 the Tab Team member's downline earning Production Bonuses on the volume.

25 120. According to Herbalife's 2012 Statement, President's Team members
26 (which include the Chairman's Club and Founder's Circle Members) earn an
27 average of \$514,638 and median of \$336,901 in payments from Herbalife.

28 **Chairman's Club (SL)**

1 121. Herbalife promotes a distributor to the Chairman's Club if the
2 distributor has five Fully-Qualified President's Team members in five separate lines
3 of the distributor's downline organization.

4 122. Chairman's Club Members are eligible for a percentage of Herbalife's
5 global sales. This bonus is the "Mark Hughes Bonus Award."

6 123. The Mark Hughes Bonus Award is a bonus pool representing a 1% of
7 Herbalife's *worldwide* product sales (calculated using SRP). Herbalife distributes
8 this bonus annually among the Chairman's Club and Founder's Circle Members. A
9 copy of the 2010 Mark Hughes Bonus Award Qualifications and Rules (available
10 by searching google for "'MH Bonus' Herbalife") is attached as **Exhibit J**.

11 124. The rules to qualify for a Mark Hughes Bonus are incredibly complex.
12 They largely depend on a distributor having President's Team Members within their
13 downline who meet certain production requirements, the Royalty Override Points
14 that Herbalife awards the distributor, and their overall organization production.
15 Notably, there are no rules requiring additional retail sales beyond the "10-Retail
16 Customer Rule" and "70% Rule."

17 125. Herbalife can also exercise discretion in awarding the MH Bonus.
18 Chairman's Club and Founder's Circle members are encouraged to

19 Demonstrate leadership and Herbalife spirit. ...Support, promotion and
20 participation in Herbalife efforts, including Company meetings and
21 other efforts such as conference calls, Herbalife Broadband Network
22 (HBN), audio/visual recordings, promotions, marketing and sales,
23 projects, suggestions and working with the Company as it develops
24 strategic plans and leads the effort to enhance the Company's overall
25 business... Attendance of the Distributorship at major events.

26 126. This discretionary element of the MH bonus creates symbiotic
27 relationship between Herbalife and the Beneficiaries and Promoters. It is not
28 enough for a Beneficiary and Promoter to build their downline; instead, the
Beneficiary and Promoter must actively work with Herbalife to promote the scheme
and "enhance [Herbalife's] overall business."

1 127. Plaintiff is informed based on information found at
2 <http://www.herbalife.com/chairmansclub> and believes there are only forty-three
3 Chairman's Club members, worldwide, as of April 4, 2013.

4 **Founders Circle (SL)**

5 128. The pinnacle of the Herbalife Pyramid is the Founder's Circle.

6 129. Herbalife promotes a distributor to the Founder's Circle if the
7 distributor has ten first-line, Fully-Qualified President's Team members in ten
8 separate lines of that distributor's downline organization.

9 130. Founder's Circle members are also eligible for the "Mark Hughes
10 Bonus Award."

11 131. Plaintiff is informed based on information found at
12 <http://www.herbalife.com/chairmansclub> that as of April 4, 2013, there are only
13 eight Founder's Circle members, worldwide.

14 **THE ILLEGAL SCHEME**

15 132. Herbalife's compensation structure rewards recruiting of new
16 participants over retail sales and leads to abuses.

17 133. These abuses include: (1) Herbalife and Beneficiaries and Promoters
18 making outlandish statements about potential earnings and the business opportunity
19 for potential and actual distributors; (2) distributors focusing on recruiting new
20 distributors rather than on making retail sales of products; (3) distributors
21 purchasing more products than they can feasibly sell to actual retail customers to
22 meet volume requirements (a practice known as "inventory loading"); (4) Herbalife
23 and Beneficiaries and Promoters encouraging other distributors to make "one-time"
24 purchases to jump up the pyramid to higher levels ("pay determines position" and
25 "position determines pay"); and (5) Herbalife and Beneficiaries and Promoters
26 encouraging their downline distributors to recruit other distributors so they can use
27 those distributors' purchases to move higher up the Herbalife Pyramid and get the
28 Royalty Overrides, bonuses, and other incentives.

1 134. Herbalife Ltd.'s 2011 and 2012 10-Ks describes this compensation
2 structure as necessary to keep "its most active and productive distributors" – the
3 Beneficiaries and Promoters:

4 Once a distributor becomes a sales leader, he or she has the
5 opportunity to qualify by earning specified amounts of royalty
6 overrides for the Global Expansion Team, the Millionaire Team or the
7 President's Team, and thereby receives production bonuses of up to
7%. We believe that the opportunity for distributors to earn royalty
overrides and production bonuses contributes significantly to our
ability to retain our most active and productive distributors.

8 Based on their 10-Ks, Herbalife Ltd. books the payment of these Royalty Overrides,
9 bonuses, and other incentives on its own balance sheet as an expense.

10 135. In its 2011 10-K, Herbalife Ltd. admits its business depends upon it
11 success in recruiting and retaining distributors:

12 Our ability to remain competitive depends, in significant part, on our
13 success in recruiting and retaining distributors through an attractive
14 compensation plan and other incentives. We believe that our
15 production bonus program, international sponsorship program and
other compensation and incentive programs provide our distributors
with significant earning potential.

16 In its 2012 10-K, Herbalife changed that to mention its products: "Our ability to
17 remain competitive depends on having relevant products that meet consumer needs,
18 a rewarding compensation plan, and a financially viable company."

19 136. With the 2004 and 2005 disclosures by Herbalife regarding its NSL
20 turnover of 90% (who make up 83% of its total distributors) and disclosures that of
21 the remaining 17% who are Supervisors and above, 43%-51% of its Supervisors do
22 not requalify, historically, most Herbalife distributors will fail.

23 137. As illustrated best by Exhibit B, Herbalife's 2013 Statement, the
24 Herbalife Pyramid makes money for those few at the top of the pyramid – the
25 Beneficiaries and Promoters – and those are the distributors Herbalife tries to retain
26 to remain competitive in the industry – and disappoints the many at the bottom who
27 cannot make retail profits and who give up on the Herbalife "business opportunity"
28 in droves.

Herbalife's Inducement of New Recruits

138. Herbalife induces new recruits to join the Herbalife program through material false representations that such recruits can re-sell Herbalife products for retail profit and can move up the pyramid and earn commissions, bonuses, and other incentives because of their recruiting activities.

139. Besides representations made in the IBP or mini-IBP, Herbalife also promotes the scheme using distributor testimonials. In testimonials Herbalife published on its website, Herbalife tells recruits and distributors:

- a. Natalie and Justin M. say that "'Now we control our destiny.' ... 'We researched different business opportunities,' ... 'But Herbalife offered the chance to work from home, coupled with solid earning potential.'"
- b. Scotty M. says that "'After just two years working the business, I was able to quit my job and become a full-time Distributor.' 'I wanted to be my own boss.' ... 'I've been able to upgrade to a bigger home and nicer car.'"
- c. Wendy W. says "'I'm the owner of an International business!' ... 'If you have little or no business experience, don't worry; determination can go a long way!'"

These statements taken from Herbalife's website are attached as **Exhibit K**.

140. In Herbalife's IBP and Mini-IBP, Herbalife includes a magazine called *Live the Good Life! HERBALIFE* (Exhibit F). There, with images of currency, luxury vehicles, boats, and expensive homes, Herbalife tells recruits that it is a "part-time opportunity," "[a] full-time Opportunity," and "[t]he opportunity to earn more than you ever thought possible and make your dreams come true!" Recruits are also told this is "[a] business opportunity for everyone that's fun, simple and magical!" and that all they need to do is: use the products, wear the button, and talk to people – "Use, Wear, Talk."

141. In *Live the Good Life! Herbalife*, Herbalife provides the following example of potential ways that new recruits can earn income. For both of these examples in the below representation.

Earn an income several different ways



Direct Sales

- As a Distributor \$25 of every \$100 25%
- As a Success Builder \$42 of every \$100 42%
- As a Supervisor \$50 of every \$100 50%

Downline organization

- Commission checks
- Royalty checks
- Bonus checks

Plus:

- Recognition
- Promotions
- Training

How to earn even more income

Example 1

You = Supervisor (2,500 Volume Points)

You recruit & retain 2 supervisors

- 2 Supervisors each produce 2,500 Organizational Volume Points
- = 5,000 Volume Points R.O. = \$250/month

They each recruit & retain 2 Supervisors

- 4 Supervisors each produce 2,500 Organizational Volume Points
- = 10,000 Volume Points R.O. = \$500/month

They each recruit & retain 2 Supervisors

- 8 Supervisors each produce 2,500 Organizational Volume Points
- = 20,000 Volume Points R.O. = \$1,000/month

Total of 35,000 Volume Points, Your R.O. = \$1,750 Plus Production Bonus of 2% = \$700

Total of Checks \$2,450/mo.

Example 2

You = Supervisor (2,500 Volume Points)

You recruit & retain 3 supervisors

- 3 Supervisors each produce 2,500 Organizational Volume Points
- = 7,500 Volume Points R.O. = \$375/month

They each recruit & retain 3 Supervisors

- 9 Supervisors each produce 2,500 Organizational Volume Points
- = 22,500 Volume Points R.O. = \$1,125/month

They each recruit & retain 3 Supervisors

- 27 Supervisors each produce 2,500 Organizational Volume Points
- = 67,500 Volume Points R.O. = \$3,375/month

Total of 97,500 Volume Points, Your R.O. = \$4,875 Plus Production Bonus of 4% = \$3,900

Total of Checks \$8,775/mo.

Imagine...4 or 5!

*The incomes presented are applicable to the individuals depicted and are not a guarantee of your income, nor are they typical. For the Statement of Average-Gross Compensation for U.S. Supervisors, go to www.Herbalife.com or www.MyHerbalife.com.

41

Based on Herbalife's 2013 Statement, a distributor receiving checks of \$2,450 a

1 month or \$8,775 a month would be at least in the top 0.23% or 0.092% of all U.S. distributors, respectively. Prior to Herbalife's 2013 Statement, a prospective or actual distributor had no way to know how atypical Herbalife's examples were.

4 142. Herbalife also distributes a magazine through the U.S. Mail called
5 *Herbalife Today*. *Herbalife Today* follows a format where Herbalife Ltd.'s CEO
6 and President, Michael Johnson, has a letter to distributors, as well as product
7 advertisements, as well as a section called "Success Stories," featuring a President's
8 Circle member, along with other success stories of TAB Team and GET Team
9 members.

10 143. In the *Herbalife Today* magazine, Issue No.156, which Herbalife
11 distributed in the third quarter of 2012, and which Herbalife sent to Plaintiff Bostick
12 and other members of the class, Michael Johnson writes, "[m]illions of people's
13 lives are being improved through our products and our business opportunity."
14 Selected portions of *Herbalife Today*, Issue No. 156 are attached as **Exhibit L**.
15 Bostick reviewed *Herbalife Today* as they were sent to him.

16 144. For the "Success Story," *Herbalife Today*, Issue No. 156, p.11-12,
17 features a Chairman's Club member, Paulina Riveros. Herbalife tells a tale of
18 Paulina working part-time using "a proven and surprisingly simple approach to
19 breathe life into her organization: using the products, wearing the button, and
20 talking to people." "This is how Paulina began climbing the Marketing Plan and
21 earning amazing income. ... Today she lives in a spacious ranch in Florida, and has
22 a lifestyle that she couldn't have imagined in her wildest dreams."

23 145. *Herbalife Today*, No 156, also features a section called "Where
24 Inspiration Meets Success: At a crossroads in their lives, these Distributors took the
25 high road, and turned their inspiration into success." There, distributors like Deisy
26 T., advises readers:

27 You only have to put in the hard work along with the dedication,
28 patience and discipline, attributes you can learn at the events.
Herbalife is a real opportunity for everyone who is willing to focus

1 and work for his or her goals. Plant a seed every day and you will
2 harvest lifetime success.

3 146. *Herbalife Today* is full of “success” stories of distributors like the
4 Beneficiaries and Promoters. They boast of: their “successful international business
5 that I managed to build from scratch”; leaving high-paying jobs to join the
6 Herbalife business; enjoying “a lifestyle that they always dreamed of”; replacing
7 “two engineering salaries with Herbalife income”; and “making more money than
8 he could have ever imagined.” Herbalife has published similar testimonials in
9 *Herbalife Today* for the last four years.

10 147. Herbalife also has its own official YouTube channel,
11 <http://www.youtube.com/user/HerbalifeIntl>. There, a video entitled “Why
12 Herbalife, Why Now? Building your Business”(uploaded on December 22, 2008
13 and available through the date of filing, <[http://www.youtube.com/watch?v=-](http://www.youtube.com/watch?v=-990eOlwchw)
14 [990eOlwchw](http://www.youtube.com/watch?v=-990eOlwchw)>) demonstrates the Herbalife “pitch.”

15 148. Herbalife Ltd.’s Chairman and CEO, Michael Johnson, introduces that
16 video, saying “boy do we have a solution to help you in these tough economic
17 times.” Highlighting the economic uncertainty at the time, the video asks “why
18 Herbalife?” To that question, various distributors respond: “it’s recession proof.”
19 “When everybody else is having troubles, listen – we’re flourishing.” “When the
20 economy is bad our business is fueled.” “I got started in a recession – this is my
21 fourth recession. I’m more excited about today than ever before.” And “This
22 opportunity can be your answer.”

23 149. In that video, Distributors tell viewers that with Herbalife “you get to
24 be your own boss,” “earn extra money,” “work from home,” “raise your own
25 children,” “make your own hours,” “make part-time or full-time money,” “take
26 your family on vacations,” “give your family all the extras that they deserve,”
27 “change your lifestyle to do whatever you want to do.” When asked again, “why
28 Herbalife,” recruits are told “because you can finally earn what you’re worth.”

1 150. The video ends with the Herbalife's Chairman and CEO exclaiming,
2 "So why are you waiting. Come on – at Herbalife we've got the answer to these
3 tough economic times. Contact the person who sent you this video and start
4 improving your life right now. Become an Herbalife independent distributor today."

5 **Beneficiaries and Promoters' Inducement of New Recruits &**
6 **Rallying the Troops**

7 151. Herbalife features the Beneficiaries and Promoters on its website
8 www.herbalife.com/chairmansclub (visited April 8, 2013) and at
9 www.video.herbalife.com. There, many of the Beneficiaries and Promoters have
10 videos detailing their expensive lifestyles, lavish homes, luxury cars, and their
11 "rags-to-riches" stories, all purportedly made possible through Herbalife.

12 152. Herbalife also prominently features the Beneficiaries and Promoters in
13 literature, flyers, and public events.

14 153. Herbalife sponsors what it calls an "Herbalife Extravaganza." The
15 Herbalife Extravaganza is annual convention that Herbalife promotes in *Herbalife*
16 *Today*, online and through emails. At the Extravaganza, Herbalife distributors come
17 from around the country for sales and marketing advice and tips from Beneficiaries
18 and Promoters.

19 154. In one video taken from the Herbalife 2010 Extravaganza in Los
20 Angeles, California, Beneficiary and Promoter Geri Cvitanovich, in minutes 1:40-
21 3:00, tells a convention hall filled with distributors that the Herbalife plan "is a
22 confidence plan ... to take you from where you are to wherever you want to go,"
23 grooming them to become multimillionaires:

24 all of us are getting groomed to become multi-millionaires. That is an
25 awesome opportunity. Now you can take advantage of it. Or you only
26 want to make \$60,000, \$100,000, couple \$100,000. But the fact that
27 we are all here getting groomed to become millionaires in today's
28 marketplace to me is an awesome privilege to be a part of. And I just
want those of you who are new to know that you are in the right place
at the right time. The fastest amount of growth in the shortest amount
of time in our history. And we are doing nothing but going up.

1 That video can be found at <http://www.youtube.com/watch?v=PmeLJHHKoDk>
2 (visited April 8, 2013).

3 155. In another video taken at the Herbalife 2011 Extravaganza in Las
4 Vegas found at <http://www.youtube.com/watch?v=cVbd8bw4MIQ> (visited April 8,
5 2013) Beneficiary and Promoter Susan Peterson tells attendees, at minutes 1:03-
6 1:58 that, if they are not getting rich in Herbalife, "it's wrong" and that they are
7 taking things for granted:

8 A lot of us, we built our organizations not when it was easy but when
9 it was hard. When it was terrible. When it was tough. And to make a
10 fortune in the tough times is really something. But to make it in the
11 easy times you would think everyone would do it and to not do [it] is
just to me wrong. I mean if you are not getting rich today in Herbalife,
I'm going to be honest, it's wrong. It's really wrong. It means you're
taking things for granted.

12 Peterson instructs attendees at minutes 3:00-5:42 that to increase their royalty
13 checks, they should focus on recruiting people looking for opportunity:

14 If you want to recruit somebody who loves the products and who
15 wants to be your discounted customer because they love the products
... I would say keep doing that and it's wonderful. But you can't
16 count that in business-building recruiting. If you want to move the
check, you need to find other people that want to make money and
17 represent the Herbalife products and Herbalife opportunity. People
that are like you that want to be distributors....find those people that
18 are looking for opportunity. That want to change their family's lives
and their financial situation. [Those are the] people you need to work
19 with. [Those are] the people you need to find. And believe me, there
has never been an easier time to find people like that, okay, because
20 our economy is bad in America. But at the same time our opportunity
has never been stronger. Our brand, our product, our company, our
21 direction. And if you aren't going after this, shame on you. Because
you're going to miss the greatest time-period to literally go here
22 [gestures with her hand down] to here [gestures with her hand up]
with your royalty check. It doesn't happen often. It has happened two
23 times in my Herbalife career. This is number three. This is the time to
work. This is the time to recruit. This is the time to build a new
24 organization. This is the time. There has never been a time this easy.
You've gotta go for this.

25 156. In a video profile of Beneficiary and Promoter Doran Andre found at
26 <http://www.youtube.com/watch?v=2dYK605bAaU> (visited April 8, 2013) Andre
27 tells about how, at minutes 1:08-2:00, he went from working for a company at 22
28 building his own Herbalife distributorship:

1 There [were] people in the company that wanted to mentor us. There
2 was a support system, an infrastructure, a business model that all we
3 needed to do is execute. And then before you know it, in four months
4 working the same amount of hours, two to three hours a week, [our]
income hit \$1,500 a month...and in 90 days our income hit \$10,000 a
month. And our very first calendar year our income hit \$350,000. And
our second year... our income hit a million one.

5 Andre goes on to remark, after a tour of his luxury home and images of his red
6 Ferrari, at minutes 4:00-4:15:

7 You know it's really amazing. I step out of the Ferrari or Bentley or
8 whatever and people go 'what does that guy do for a living?' and I go
9 I'm an Herbalife independent distributor. And people are absolutely
amazed at that that's what I do. It's an incredible quality of life.

10 Andre also operates what he calls the "Financial Success System." In a video found
11 at <http://vimeo.com/20317153> (visited April 8, 2013) promoting his system, he
12 shows his \$30,000,000 home, luxury cars and motorcycle and tells his audience:
13 "the big money hasn't even been made in Herbalife.... The biggest money in the
14 shortest period of time is going to be in the next 3-5 years."

15 157. These types of grand overstatements regarding distributors' potential
16 earnings and opportunities are part of a pattern and practice throughout the
17 Herbalife Pyramid. One Herbalife distributor's website, <http://www.cwgteam.com/>,
18 (visited April 8, 2013) promises that:

19 how far you take your Herbalife business and the income you require
20 or desire is your decision. However, you may be interested in the
following statistics:

- 21 ○ Lottery Win: 1 in 13 million chance of becoming a millionaire
- 22 ○ Herbalife Distributor: 1 in 26,000 chance of becoming a
millionaire
- 23 ○ Herbalife Supervisor: 1 in 2,600 chance of becoming a
millionaire
- 24 ○ Herbalife World Team member: 1 in 800 chance of becoming a
millionaire
- 25 ○ Herbalife Global Expansion Team member: 1 in 80 chance of
becoming a millionaire
- 26 ○ Herbalife Millionaire Team member: 1 in 8 chance of becoming
a millionaire
- 27 ○ Herbalife President's Team member: becoming a millionaire is
a certainty

28 **Herbalife's Deception Regarding Potential Earnings**

1 158. When making statements regarding their wealth and the potential
2 wealth for new recruits, Herbalife and the Beneficiaries and Promoters routinely
3 refer the readers or viewers (with an asterisk and a footnote) to the Herbalife
4 “Statement of Average Gross Compensation of U.S. Supervisors.” They disclaim,
5 “Incomes applicable to the individual (or example) depicted and not average. For
6 average financial performance data, see the Statement of Average Gross
7 Compensation of U.S. Supervisors at Herbalife.com and MyHerbalife.com.”

8 159. At a meeting with Wall Street analysts in 2007, Herbalife’s Chairman
9 and CEO Michael Johnson characterized these Statements of Average Gross
10 Compensation as “transparent” to distributors:

11 We are transparent with our earnings potential among supervisors.
12 The staff [*sic.*] on this page which is the average gross compensation
13 of U.S. supervisors is a public document, it is available on our website
14 and is part of our introductory business pack that all new distributors
 receive. So, every new distributor in this Company knows exactly
 where they stand and what their opportunity is inside the Company.

15 160. As Johnson explains, throughout 2009-2013, Herbalife distributed its
16 “Statements of Average Gross Compensation of U.S. Supervisors” to all of its U.S.
17 distributors both in Book 4, the Sales and Marketing Plan, as well as on the internet.

18 161. At the bottom of each of its disclosures made from 2009-2012
19 (Exhibit A) Herbalife tells its distributors: “The figures stated above are not a
20 guarantee nor are they a projection of a typical Distributor’s earnings or profits.
21 Like any other independent business, the achievement or failure of a Distributor
22 depends upon his or her skill set, commitment and desire to succeed. At Herbalife,
23 the opportunity to earn more is always available to each and every Distributor.”

24 162. From at least 2009 through February 2013, however, Herbalife
25 cherry-picked the data set that they used to create their 2009-2013 Statements. They
26 only reported the incomes of “Supervisors” and above, and further limited that data
27 set to “Active Leaders” – those who “generated at least 2,500 points of volume in”
28 in the year “after becoming Supervisor.”

1 163. According to their 2011 Statement, "Active Leaders" only make up
 2 39.4% of Herbalife's "Leaders." Thus, not only did Herbalife fail to disclose any
 3 earnings as to majority of distributors who were NSLs, Herbalife failed to disclose
 4 the earnings of 60.6% of SLs in their statements distributed in 2012. Below is the
 5 Statement that Herbalife distributed to Bostick in his Sales and Marketing Plan. A
 6 full copy is attached as part of Exhibit A:

7 **STATEMENT OF AVERAGE GROSS
 8 COMPENSATION OF U.S. SUPERVISORS**

9 Herbalife offers its Distributors an opportunity to achieve a lifetime of
 10 better health through its scientifically advanced weight-management
 11 and nutrition products. While many of our Distributors join the
 12 Herbalife family simply to enjoy our life-changing products, others
 13 want to share their results and take advantage of the many income
 14 benefits our business opportunity provides. With Herbalife, you can
 15 work part time and earn a supplemental income, or focus solely on
 16 your Herbalife Distributorship and increase your financial potential.
 17 It's completely up to the individual how much he or she wants to
 18 achieve! A Distributor earns profits by buying Herbalife products
 19 at wholesale and reselling them at retail. If the Distributor wants
 20 to increase his or her involvement in the business and enjoy the
 21 possibility of higher levels of income, he or she may sponsor others
 22 into the business and develop an organization.

23 Over 25% of Distributors reach the rank of Supervisor and above
 24 ("Leader"), qualifying them for additional compensation, which is
 25 paid by Herbalife based upon the sales production of those they have
 26 sponsored directly and indirectly. The annual gross compensation
 27 paid by Herbalife to all Leaders during 2011 averaged \$2,900. Over
 28 39% of Supervisors are "Active" (defined as those who generated
 at least 2,500 points of volume in 2011 after becoming Supervisor).
 The annual gross compensation paid by Herbalife to Active Leaders
 during 2011 averaged approximately \$7,300.

ACTIVE LEADERS

Earning Level	% of Total Leaders	% of Active Leaders	Average Earnings (USD)
President's Team	0.2%	0.6%	\$ 515,689
Millionaire Team	0.7%	1.7%	\$ 100,195
GET	2.6%	6.5%	\$ 22,766
World Team	2.9%	7.3%	\$ 6,224
Supervisor	33.1%	83.9%	\$ 901
Total	39.4%	100.0%	\$ 7,348

29 The amounts above do not include the income Distributors can earn
 30 from their retail or wholesale income, so the actual compensation
 31 can be somewhat higher, depending upon each Distributor's
 32 personal-selling efforts.

33 The figures stated above are not a guarantee nor are they a
 34 projection of a typical Distributor's earnings or profits. Like any
 35 other independent business, the achievement or failure of a
 36 Distributor depends upon his or her skill set, commitment and
 37 desire to succeed. At Herbalife, the opportunity to earn more is
 38 always available to each and every Distributor.

164. In February 2013, Herbalife released an updated and extended disclosure. A full copy is available at Exhibit B. A portion is below:

Single-Level Distributors (No Downline)

Economic Opportunity	Distributors*		
	Number	%	
<ul style="list-style-type: none"> Wholesale price on product purchases Retail profit on sales to non-Distributors 	351,065	71%	<p>The economic rewards for single-level Distributors are the wholesale pricing received on products for consumption by the Distributor and his or her family as well as the opportunity to retail product to non-Distributors. Neither of these rewards are payments made by the company and therefore are excluded from this schedule</p>

Non-Sales Leaders** With a Downline

Economic Opportunity	Distributors		
	Number	%	
<ul style="list-style-type: none"> Wholesale price on product purchases Retail profit on sales to non-Distributors Wholesale profit on sales to another Distributor 	60,333	12%	<p>In addition to the economic rewards of the single-level Distributors above, which are not included in this chart, certain non-sales leaders with a downline may be eligible for payments from Herbalife on downline product purchases made directly with Herbalife.</p> <p>2,466 of the 4,449 eligible Distributors earned such payments in 2012. The average total payments to the 2,466 Distributors was \$104.</p>

Sales Leaders** With a Downline

Economic Opportunity	Distributors		Average Payments from Herbalife	All Sales Leaders with a Downline			
	Number	%		Number of Distributors	% of Total Grouping	Average Gross Payments	
<ul style="list-style-type: none"> Wholesale price on product purchases Retail profit on sales to non-Distributors Wholesale profit on sales to another Distributor Multi-level compensation on downline sales <ul style="list-style-type: none"> Royalties Bonuses 	82,464	17%	>\$250,000	194	0.2%	\$724,030	<p>This chart does not include amounts earned by Distributors on their sales of Herbalife products to others</p>
			\$100,001-\$250,000	452	0.5%	\$148,808	
			\$50,001-\$100,000	539	0.7%	\$68,912	
			\$25,001-\$50,000	1,136	1.4%	\$35,581	
			\$10,001-\$25,000	1,940	2.4%	\$15,538	
			\$5,001-\$10,000	2,552	3.1%	\$7,008	
			\$1,001-\$5,000	11,307	13.7%	\$2,216	
			\$1-\$1,000	39,151	47.5%	\$292	
			0	25,193	30.6%	\$0	
			Total	82,464	100.0%	\$4,485	

* 30,621 of the 351,065 single-level Distributors are sales leaders without a downline

** Sales leaders are Distributors that achieved the level of Supervisor or higher. See details on Herbalife's marketing plan at www.myherbalife.com.

1 165. Plaintiff is informed and believes based on Herbalife's 2013
2 Statement that Herbalife's representation in its 2009-2012 Statements that "[o]ver
3 25% of Distributors reach the level of Supervisor and above" is false and
4 misleading. The 2013 Statement disclosed that 83% of all of its distributors in 2012
5 were NSLs, leaving only 17% as Supervisors and above in 2013. Including the
6 30,621 distributors who became Supervisors through their own Personally
7 Purchased Volume, brings the percentage of Supervisors to 22.89% of all
8 distributors.

9 166. Herbalife's 2013 Statement discloses that 71% of all U.S. Distributors
10 – 351,065 distributors – are "Single-Level Distributors" with no downline.

11 167. Herbalife's 2013 Statement discloses that there are only 60,333 NSLs
12 with a downline (Senior Consultants and Qualified Producers). Of that number,
13 only 2,466 of those distributors earned "Wholesale Profits." Even then, the average
14 "wholesale profits" of those 2,466 distributors was \$104 for a total payment of
15 \$256,464 paid to NSLs in 2012 in "Wholesale Profits."

16 168. Herbalife's 2013 Statement also discloses that a "majority of those
17 Distributors who earned in excess of \$100,000 in 2012 had reached the level of
18 Herbalife's President's Team. During 2012, 47 U.S. Distributors joined the level of
19 President's Team. They averaged 9 years as an Herbalife Distributor before
20 reaching President's Team, with the longest being 20 years and the shortest being
21 less than three years."

22 169. Similarly, Herbalife's 2013 Statement discloses that besides the
23 82,464 SLs, there are 30,621 SLs who "paid for their position."

24 170. In its 2012, 2011, 2010, and 2009 10-K disclosures, Herbalife makes
25 at least some disclosure to investors and potential investors that it retains 51.1%,
26 48.6%, 43.3%, and 42.2% of its Sales Leaders; until the 2013 Statement; Herbalife,
27 however, failed to disclose this same fact to distributors and potential distributors.
28 Finally, in the 2013 Statement Herbalife provided distributors the same information

1 that it thinks is important for investors: “51.0% of all sales leaders as of February
2 1st, 2011, requalified by February 1st, 2012 (including 33% of first time sales
3 leaders).”

4 171. All of the information not disclosed in 2009-2012 is relevant for:
5 recruits deciding if Herbalife really is the “answer to these tough economic times”;
6 recruits deciding to become Herbalife distributors; distributors deciding to purchase
7 Herbalife product; distributors reading glowing profiles on *Herbalife Today*;
8 distributors evaluating their chances of earning “Wholesale profits,” distributors
9 deciding whether to purchase product to “pay for position”; distributors deciding
10 whether to recruit other distributors; and distributors evaluating Founder’s Circle
11 members telling them they are “groomed to become multi-millionaires” and that if
12 they are not “getting rich today in Herbalife...It’s really wrong.”

13 **Herbalife’s Recruiting Rewards Price-Out Products**

14 172. Because Herbalife sends such a large percentage of every dollar
15 received by it upline as Wholesale Profits, Royalty Overrides, bonuses, and
16 incentives – \$0.46 to \$0.64 of every dollar paid it for product – Herbalife sets the
17 SRP at an inflated price well over what Herbalife’s products sell at in the open
18 marketplace.

19 173. While Herbalife’s “competitive compensation structure” supposedly
20 pays out up to 73% of product revenues to distributors in “Retail and Wholesale
21 Profits, Royalty and bonus income and incentives,” it falls on the Herbalife
22 distributor retailing the product to recoup this 73%.

23 174. This inflated markup necessary for the “competitive compensation
24 structure” makes Herbalife’s products uncompetitive for retail sale at SRP.

25 **Overcharges on Packaging and Handling**

26 175. On top of this inflated SRP, Herbalife charges a 7% “packaging and
27 handling” fee based on the SRP for products ordered directly from Herbalife. A
28

1 distributor must add that 7% fee to the SRP to recoup their costs and earn the
2 promised retail profits.

3 176. Besides this 7% surcharge, Herbalife charges its distributors up to
4 anywhere from 2.5% to 4% of the SRP if they have products shipped to them
5 instead of picking them up at an Herbalife distribution center (there only six centers
6 in the U.S.). For a distributor to earn the promised profit on a retail sale, the
7 distributor would need to resell the product at 109.5% to 111% of SRP.

8 177. Based on Herbalife's 2009-2012 10-Ks, Herbalife's average revenue
9 for North America for "packaging and handling" and shipping is 10.33%, 10.50%,
10 10.59, and 10.7% of its total "Retail Sales" (which it uses the SRP to calculate).

11 178. In an April 21, 2011 letter to the SEC, Herbalife states "[t]he shipping
12 and handlings costs for 2010, 2009, and 2008 were \$58 million, \$49 million and
13 \$48 million, respectively." Herbalife's 2010 and 2009 10-Ks, however, account for
14 Herbalife's revenues for North America (which includes Canada, Jamaica, and
15 Aruba) from shipping and handling for 2010, 2009, and 2008 as \$102.70 million,
16 \$87.30 million, and \$80.8 million, respectively.

17 179. Plaintiff is informed and believes based on the discrepancy between
18 these reported numbers that Herbalife overcharged members of the class in 2009
19 and 2010 by millions of dollars for packaging, shipping, and handling. Because
20 Herbalife has not changed its formula to calculate the "Packaging and Handling"
21 and shipping costs since 2009, Plaintiff is informed and believes that Herbalife has
22 similarly overcharged and profited from Bostick and the class from their supposed
23 "Packaging and Handling" and "Shipping" fees during 2011, 2012, and 2013.

24 180. Plaintiff is further informed and believes that Herbalife uses this
25 surcharge on top of the SRP as a way to avoid having to pay \$0.46 to \$0.64 of the
26 actual revenue it receives from purchases upline. By using a surcharge, Herbalife
27 can increase its profit margin without dramatically raising the SRP on its products
28

1 (and without having to share those price increases with the Beneficiaries and
2 Promoters).

3 181. Because of the inflated SRP and the packaging, handling, and
4 shipping fees, the prices distributors pay for Herbalife's products are so high that
5 the profit Herbalife promises on retail sales at the Distributor level is almost
6 impossible.

7 182. While there is a retail component to the Herbalife Pyramid, the
8 inflated SRP of the products and inflated shipping and handling fees make it
9 unlikely that Herbalife distributors have meaningful opportunities to have retail
10 sales. As Herbalife pays out "Wholesale Profits," royalties, bonuses, and other
11 incentives regardless of whether the downline distributor sells the product at SRP,
12 there is a systematic incentive to recruit other distributors.

13 183. Herbalife's system of graduated discounts depending on the
14 distributor's position exacerbates this problem. Distributors who purchase Herbalife
15 products at a 25%, 35, or 42% discount must compete on price with other
16 distributors higher up the pyramid who can purchase products at greater discount
17 and sell those same products at or around cost.

18 184. Based on Bostick's experience in selling Herbalife products and
19 competing in the marketplace, he is informed and believes that Herbalife's
20 distributors routinely discount Herbalife products on EBay, Craigslist, and on
21 various websites from the SRP, and there is little opportunity for retail profits.

22 185. Because the distributors are Herbalife's actual customers and
23 consumers of its products and those actual customers and consumers are overpaying
24 \$0.46 to \$0.64 on the dollar for product, those distributors drop out at
25 overwhelming numbers, and Herbalife requires an ever expanding network of so-
26 called distributors.

27 **Herbalife's Sales and Marketing Plan Does Not Have or Follow**
28 **Safeguards**

1 186. In *In re Amway Corp.*, 93 F.T.C. 618 (1979) (“*Amway*”) the FTC
2 ruled that Amway did not violate the FTC Act because it adopted and enforced four
3 rules that would help a direct marketer avoid the characteristics of an FTC Act
4 violation: the initial investment rule, the 70% rule, the buyback rule, and the 10
5 customer rule.

6 187. These rules are designed to deter inventory loading and encourage
7 retail sales. In *Omnitrition*, the Ninth Circuit explained that where “a distribution
8 program appears to meet the *Koscot* definition of a pyramid scheme, there must be
9 evidence that the program’s safeguards are enforced and actually serve to deter
10 inventory loading and encourage retail sales.” *Omnitrition*, 79 F.3d 776 (1996).

11 188. **The Initial Investment Rule.** The FTC decision noted that illegal
12 schemes require a payment or initial disbursement by a new participant for the right
13 to sell products and the right to earn rewards, in return for recruiting other
14 participants into the program and which are unrelated to sale of product to the
15 ultimate user. The FTC found that Amway did not require such an investment
16 because “the Amway system does not involve an ‘investment’ inventory by a new
17 distributor. A kit of sales literature costing only \$15.60 is the only requisite.” *In re*
18 *Amway Corp.*, 93 F.T.C. 618, 716 (1979).

19 189. Defendant Herbalife requires each new Herbalife distributor must
20 purchase an International Business Pack (IBP) or mini-IBP at a cost of \$95.55 or
21 \$57.75, respectively. This requirement, by itself, does not constitute an “investment
22 inventory” under the rule.

23 190. Because Herbalife increases its discount off the SRP on a graduated
24 basis for Distributors, Senior Consultants, Success Builders, Qualified Producers,
25 and Supervisors, however, Herbalife requires an initial investment well beyond the
26 price of the IBP if a distributor wants to compete in the marketplace for retail
27 consumers of Herbalife products or move up the Herbalife Pyramid to a place
28 where they can earn commissions, Royalty Overrides, bonuses, and incentives.

1 Following the mantra of “pay for your position” and “position determines the pay,”
2 Herbalife and Beneficiaries and Promoters pressure distributors to make a
3 significant investment to “buy their discount” and get the “highest discount for the
4 least expenditure.”

5 191. In the IBC, Booklet 3, Building Your Business (Exhibit H) Herbalife
6 encourages its distributors on page 18 to invest in product inventory for customer
7 orders:

8 Here are some areas you may want to consider putting money
9 towards:

- 10 ● Product Inventory for customer orders
- 11 ● Personal product inventory
- 12 ● Advertising for your business
- 13 ● Training events/seminars
- 14 ● Business costs, such as office supplies
- 15 ● And, most of all, yourself!”

16 192. In explaining why it is important to build an investment inventory,
17 Herbalife tells distributors on page 19 of Exhibit H:

18 ● You can’t sell what you don’t have. Carry enough inventory on hand
19 to cover all your local sales

20 ...
21 ● Many people purchase product on the spot. Carry enough product
22 on hand to accommodate spur-of-the-moment sales. You don’t want
23 to make a paying customer wait

24 ...
25 ● If you are doing a one-on-one presentation, don’t make the
26 customer wait for product...”

27 193. Like here, in *Omnitrition* there was no significant charge to become a
28 distributor and the distributors had no quota of product to buy. *Omnitrition*, 79 F.3d
at 780. Similar to Herbalife, however, to receive any “non-retail” benefit from the
Omnitrition system or to move up to the next level as a “Bronze Supervisor,” the
Omnitrition distributors had to purchase and convince three other recruits to
purchase a certain amount of product. *Id.* Omnitrition argued that its business plan
did not meet the first element of the *Koscot* test because: “it does not charge for the
right to sell its products at the distributor level.” The Ninth Circuit disagreed,

1 finding that while that may be the case for the “distributor” level, considering the
2 “supervisor” level, a reasonable jury could conclude the *Koscot* factors are met:

3 A participant must pay a substantial amount of money to Omnitrition
4 in the form of large monthly product orders. In exchange for these
5 purchases, the supervisor receives the right to sell the products and
6 earn compensation based on product orders made by the supervisor’s
7 recruits. This compensation is facially “unrelated to the sale of
8 product to ultimate users” because it is paid based on the suggested
9 retail price of the amount ordered from Omnitrition rather than based
10 on actual sales to consumers. On its face, Omnitrition’s program
11 appears to be a pyramid scheme. Omnitrition cannot save itself simply
12 by pointing to the fact that it makes some retail sales.

13 *Id.* at 782 (emphasis added).

14 194. **The “70%” Rule:** In the *Amway* decision, the FTC explained the 70%
15 rule as follows: “[t]o ensure that distributors do not attempt to secure the
16 performance bonus solely on the basis of purchases, Amway requires that, to
17 receive a performance bonus, distributors must resell at least 70% of the products
18 they have purchased each month.... Amway enforces the 70% rule.” *Amway*, 93
19 F.T.C. 618, 646, ¶73.

20 195. Herbalife’s 70% rule, found at page 71 of Exhibit C is:

21 In order to qualify for and receive Royalty Overrides, Production
22 Bonuses, and other bonuses paid by Herbalife, at least 70% of the
23 total value of Herbalife products a Distributor purchases each Volume
24 Month must be sold or consumed that month. For the purpose of
25 fulfilling the certification requirements of this Rule, a Distributor may
26 count any or all of the following:

- 27 • Sales to retail customers;
- 28 • Sales at wholesale to downline Distributors;
- Product used for personal or family consumption; and
- *Product consumed at Nutrition Clubs.

29 If the Distributor fails to timely certify to Herbalife that they
30 have sold or consumed 70% of the product purchases made that
31 Volume Month, Royalty Overrides, Production Bonuses, and other
32 bonuses will not be paid to the Distributor.

33 *If a Distributor utilizes Nutrition Club sampling activity
34 towards compliance, the Distributor shall maintain a log of member
35 visits for at least two years, setting forth the name of the member,
36 dates of visits, and contact information, and shall make those records
37 available for verification purposes if requested by the Company.

1 196. Herbalife's 70% Rule does not require that Herbalife's distributors
2 resell at least 70% of the Herbalife products to resale customers because it allows
3 "[p]roduct used for personal or family consumption" to satisfy the rule. As
4 reiterated by the 9th Circuit in *Webster v. Omnitrition Intern., Inc.*, self-consumption
5 does not count as a retail sale: "If *Koscot* is to have any teeth, such a sale [for self-
6 consumption] cannot satisfy the requirement that sales be to 'ultimate users' of a
7 product." *Omnitrition*, 79 F.3d 776, 783 citing *Koscot*, 86 F.T.C. 1106,1181.

8 197. Herbalife does not require a Supervisor to make *any* retail sales as the
9 rule allows "[s]ales at wholesale to downline Distributors." Again, as explained by
10 the 9th Circuit in *Omnitrition* in finding that where Omnitrition also allowed sales to
11 downline distributors to count for the 70% rule it did not comply: "Importantly, the
12 [70%] requirement can be satisfied by *non-retail* sales to a supervisor's own
13 downline [distributors]. This makes it less likely that the rule will effectively tie
14 royalty overrides to sales to ultimate users, as *Koscot* requires." *Omnitrition*, 79
15 F.3d 776, 783.

16 198. The 70% Rule is not applied to NSL distributors (or Supervisors who
17 do not have a First, Second, or Third Level) even though those distributors can
18 qualify for compensation in promotions up the chain, increased discounts on
19 purchases, and commissions on downline purchases.

20 199. While Herbalife requires Supervisors and above to certify that they
21 have complied with the 70% rule, Plaintiff is informed and believes based the
22 Court's finding of fact in its August 25, 2009 Memorandum & Order Regarding
23 Cross-Motions for Summary Judgment, *Herbalife International of America, Inc. v.*
24 *Ford et al.* Case No. 2:07-CV-2529-GAF-FMO (C.D. Cal.), that "Herbalife does
25 not perform audits to determine compliance with the 70% Rule unless there is an
26 ongoing 'ethical investigation' of a Supervisor suspected of violating Herbalife's
27 policies." *See Memorandum & Order* (Docket No. 374), 8:16-19.

1 200. **The Ten Customer Rule:** The “ten customer rule” approved by the
2 FTC in *Amway* provided that “distributors may not receive a performance bonus
3 unless they prove a sale to each of ten different retail customers during each month.
4 . . . The ten customer rule is enforced by Amway and the Direct Distributors. . .”
5 *Amway*, 93 F.T.C. 618, 646, ¶74.

6 201. Herbalife’s Rule is: Rule 18-B The 10 Retail Customers Rule

7
8 A Distributor must personally make sales to at least ten (10) separate
9 retail customers in a given Volume Month to qualify for and receive
10 Royalty Overrides, Production Bonuses, and other bonuses paid by
11 Herbalife. For the purpose of fulfilling the certification requirements
12 of this Rule, a Distributor may count any or all of the following each
13 Volume Month.

- 14 • A sale to a retail customer;
- 15 • A sale to a first-line Distributor with up to 200 Personally
16 Purchased Volume Points (and no downline Distributors) may be
17 counted as a sale to one (1) retail customer; and
- 18 • *A Nutrition Club member who consumed products during ten
19 (10) visits to a Nutrition Club within one Volume Month may be
20 counted by the Nutrition Club operator as a sale to one (1) retail
21 customer.

22 If the Distributor fails to timely certify to Herbalife that they have sold
23 to at least ten (10) retail customers in a given Volume Month, Royalty
24 Overrides, Production Bonuses, and other bonuses will not be paid to
25 the Distributor.

26 202. Herbalife’s Ten Customer Rule does not mandate sales to customers
27 not already Herbalife distributors. Herbalife allows “[a] sale to a first line
28 Distributor with up to 200 personally purchased Volume Points (and no downline
Distributors) which may be counted as a sale to one (1) retail customer,” to count to
satisfy the Retail Customer Rule. Herbalife’s exception takes the “teeth” out of
Koscot.

1 203. Distributors can also satisfy this Herbalife's rule by giving away free
2 samples of Herbalife products at their Nutrition Clubs. This does not constitute an
3 "actual sale" under *Omnitrition* or *Koscot*.

4 204. Herbalife does not apply the Ten Customer Rule to NSL distributors
5 and Supervisors (who do not have a First, Second, or Third Level), even though
6 they can obtain performance bonuses in promotions up the chain, increased
7 discounts on purchases, and commissions on downline purchases.

8 205. Herbalife's 10 Customer Rule and 70% Rule are ineffective in
9 ensuring its distributors focus on retailing the products over recruiting. Because
10 only distributors eligible for Royalty Overrides, bonuses, and other incentives must
11 comply with the rule, to even become a distributor subject to the rules a distributor
12 must recruit heavily and would be in at least the top 10% of all Herbalife
13 distributors.

14 206. **The Buy Back Rule.** Amway had a buy back rule where participants
15 had to buy back from any person they recruited any saleable, unsold inventory upon
16 the recruit's leaving Amway. *Amway*, 93 F.T.C. 618, 716. As the 9th Circuit
17 explained: "The buy-back rule is only effective if it can reduce or eliminate the
18 possibility of inventory loading by insuring that program participants do not find
19 themselves saddled with thousands of dollars' worth of unsaleable products."
20 *Omnitrition*, 79 F.3d 776, 784.

21 207. Herbalife has a 30-Day Money Back Guarantee for "retail customers."
22 When a retail customer returns product, they return the product to the distributor
23 who sold them the product. That distributor is required, within 30 days of paying
24 the refund to the customer, to send back the unused portion of the product or the
25 containers. Then Herbalife exchanges the returned product with an identical
26 replacement product for the Distributor, regardless of whether that distributor has
27 another customer who wants to purchase the product or products.

28 208. Herbalife has no such "Money Back Guarantee," for a distributor.

209. The distributor can return products *purchased from Herbalife* within the prior 12 months on the following conditions:

- a. The distributor must resign as an Herbalife Distributor (and forfeit all of their downline).
- b. Herbalife reimburses a distributor the SRP of a product less that distributor's discount to purchase the product, less a 10% restocking fee.⁶ A distributor does not receive a reimbursement of the 7% packaging and handling fee of the SRP or the shipping fee.
- c. If the distributor has received Royalty Overrides, that distributor must return all of their records relative to the 70% rule.

An "Inventory Repurchase Request Form" is found at page 50 of Exhibit C.

210. If a distributor purchases products from distributors in their upline (and not directly from Herbalife) this return policy does not apply. As NSLs can purchase product from their sponsor or their first upline Supervisor, unlike Amway's rule mandating that participants had to buy back recruit's product, Herbalife leaves its NSLs at the mercy of their upline to determine whether they will accept the return.

211. As Herbalife took a 10% restocking fee from 2009 through May of 2012, Herbalife has not complied with the *Amway* rule.

212. As Herbalife does not reimburse the distributor for the inflated packaging and shipping fees, Herbalife has not complied with the *Amway* rule.

213. Herbalife knows of, approves, promotes, and facilitates the systematic noncompliance with or breach of, the rules that purportedly protect against the operation of an illegal scheme.

Herbalife is Bound to Operate as Pyramid Scheme

⁶ Plaintiff is informed that the 10% restocking fee was discontinued sometime in May of 2012.

214. Herbalife cannot fix itself even if it wants. In Herbalife's 2012 10-K, it explains it is contractually bound to continue implementing and operating this pyramid scheme:

This agreement with our distributors provides that we will not change certain aspects of our marketing plan without the consent of a specified percentage of our distributors. For example, our agreement with our distributors provides that we may increase, but not decrease, the discount percentages available to our distributors for the purchase of products or the applicable royalty override percentages, including roll-ups, and production and other bonus percentages available to our distributors at various qualification levels within our distributor hierarchy.

215. As Plaintiff Bostick has never made such an agreement with Herbalife, Bostick is informed and believes that the agreement Herbalife refers to is between Herbalife and Beneficiaries and Promoters and others. This agreement solidifies and memorializes that symbiotic relationship between Herbalife and the Beneficiaries and Promoters.

Class Action Allegations

216. Plaintiff Bostick brings this action as a class action under Federal Rule of Civil Procedure 23.

217. **Class Definition:** All persons who were Herbalife distributors from April 2009 until the present.

Excluded from the class are the Defendants, their employees, family members, and any distributor who has been a member of the President's Circle, Founder's Circle, Chairman's Club, Millionaire Team, or the GET Team.

218. Plaintiff Bostick also seeks relief for himself and all members of the class who agreed to a choice of law of California under California's Unfair and Deceptive Practices Acts, and California's Unfair Competition Act.

219. Plaintiff Bostick seeks to pursue a private attorney general action for injunctive relief for himself and all members of the class who agreed to a choice of law of California, and he satisfies the standing and class action requirements.

1 220. The members of the class number are over 400,000 and joinder of all
2 Class members in a single action is impracticable.

3 221. There are questions of law and/or fact common to the class and
4 subclass, including but not limited to:

- 5 a. Whether Herbalife is operating an unlawful scheme;
- 6 b. Whether Herbalife and Beneficiaries and Promoters were operating an
7 unlawful scheme;
- 8 c. Whether distributors paid money to Herbalife for (1) the right to sell a
9 product and (2) the right to receive, in return for recruiting others,
10 rewards which were unrelated to the sale of the product to retail
11 consumers
- 12 d. Whether distributors had to make an initial investment;
- 13 e. Whether Herbalife had a 70% Rule and enforced it;
- 14 f. Whether Herbalife had a Ten-Customer Rule and enforced it;
- 15 g. Whether Herbalife had a buy-back rule and enforced it;
- 16 h. Whether Herbalife's Sales and Marketing Plan constitutes an endless
17 chain under California state law.
- 18 i. Whether Herbalife or the Beneficiaries and Promoters omitted to
19 inform Bostick and the plaintiff class that they were entering into an
20 illegal scheme where an overwhelming number of participants lose
21 money;
- 22 j. Whether Herbalife's Statements of Average Gross Compensation
23 distributed from 2009 through 2012 were deceptive and misleading;
- 24 k. Whether Herbalife's business model primarily incentivizes the
25 payment of compensation facially unrelated to the sale of the product
26 to ultimate users because it is paid based on the suggested retail price
27 of the amount ordered from Herbalife rather than on actual sales to
28 consumers;

- 1 l. Whether Herbalife overcharged for Packaging and Handling;
- 2 m. Whether Herbalife or the Beneficiaries and Promoters engaged in acts
- 3 of mail and/or wire fraud in direct violation of RICO;
- 4 n. To what extent the conduct injured Bostick and the class;
- 5 o. Whether Herbalife's conduct constitutes an unlawful, unfair and/or
- 6 deceptive trade practice under California state law;
- 7 p. Whether Herbalife's conduct constitutes unfair competition under
- 8 California state law; and
- 9 q. Whether Herbalife's conduct constitutes false advertising under
- 10 California state law; and

11 222. These and other questions of law and/or fact are common to the class
12 and predominate over any question affecting only individual class members.

13 223. Bostick's claims are typical of the claims of the class in that Bostick
14 was a distributor for Defendant Herbalife and lost money because of the illegal
15 scheme.

16 224. Bostick will fairly and adequately represent the interests of the class.
17 Bostick's claims are typical of those of the class. Bostick's interests are fully
18 aligned with those of the class. And Bostick has retained counsel experienced and
19 skilled in complex class action litigation.

20 225. Class action treatment is superior to the alternatives for the fair and
21 efficient adjudication of the controversy alleged, because such treatment will allow
22 many similarly-situated persons to pursue their common claims in a single forum
23 simultaneously, efficiently and without unnecessary duplication of evidence, effort,
24 and expense that numerous individual actions would engender.

25 226. Bostick knows of no difficulty likely to be encountered in the
26 management of this case that would preclude its maintenance as a class action.

27 **FIRST CLAIM FOR RELIEF**

28 **(ENDLESS CHAIN SCHEME; California Penal Code §327)**

1 **and Section 1689.2 of the California Civil Code)**

2 **Against All Defendants**

3 227. Plaintiff realleges the previous allegations.

4 228. California Penal Code § 327 renders endless chain schemes illegal.

5 Section 1689.2 of the California Civil Code provides:

6 A participant in an endless chain scheme, as defined in Section 327 of
7 the Penal Code, may rescind the contract upon which the scheme is
8 based, and may recover all consideration paid pursuant to the scheme,
9 less any amounts paid or consideration provided to the participant
10 pursuant to the scheme.

11 229. Herbalife is operating an endless chain scheme.

12 230. Bostick and the class have suffered an injury in fact and have lost
13 money or property because of Herbalife's business acts, omissions, and practices.

14 231. Bostick and the class are entitled to recover all consideration paid
15 under the scheme, less any amounts paid or consideration provided to the
16 participant under the scheme.

17 232. As punishment for violation of California Penal Code §327 is
18 punishable by imprisonment for over one year, violation of California Penal Code
19 §327 can provide the basis for a RICO predicate act of racketeering.

20 **SECOND CLAIM FOR RELIEF**

21 **(RICO 18 U.S.C. § 1962(a))**

22 **Against All Defendants**

23 233. Plaintiff realleges the previous allegations.

24 234. Herbalife and others willfully and intentionally violated and continue
25 to violate RICO and California law with the goal of obtaining money, directly and
26 indirectly, through a pattern of racketeering activities in violation of the mail and
27 wire fraud statutes, 18 U.S.C. §§ 1341 and 1343, 18 U.S.C. 1962(a), and California
28 Penal Code §327.

235. Herbalife International of America, Inc., Herbalife International, Inc.,
and Herbalife, Ltd. and the Beneficiaries and Promoters are engaged in activities

1 affecting federal interstate and foreign commerce and are entities capable of holding
2 a legal or beneficial interest in property. Herbalife International of America, Inc.,
3 Herbalife International, Inc., and Herbalife, Ltd. and the various Beneficiaries and
4 Promoters are “persons,” as that term is defined by 18 U.S.C. §1961(3).

5 **The Herbalife Enterprise**

6 236. Herbalife International of America, Inc., Herbalife International, Inc.,
7 and Herbalife Ltd. and the Beneficiaries and Promoters make up the “Herbalife
8 Enterprise” as an association of entities and individuals associated in fact to operate
9 an illegal pyramid scheme. The Herbalife Enterprise is not a legal entity within the
10 meaning of “enterprise” as defined in 18 U.S.C. § 1961(4). Herbalife and the
11 Beneficiaries and Promoters have been members of the Herbalife Enterprise from at
12 least April 2009 and continuing until the present. Herbalife and the Beneficiaries
13 and Promoters are separate entities from the Herbalife Enterprise and play separate
14 and distinct roles in the operation of the Herbalife Enterprise.

15 a. Herbalife Ltd. is the founder, architect, and beneficiary of the
16 Herbalife Pyramid. Through interstate wire and mails, it coordinates
17 the Herbalife Enterprise, a worldwide scheme. It also pays and awards
18 the Royalty Overrides, bonuses, and other incentives to the
19 Beneficiaries and Promoters and others. This includes the Mark
20 Hughes Bonus, which Herbalife Ltd. exercises discretion in awarding,
21 based on the Beneficiaries and Promoters’ participation in promoting
22 the Herbalife Enterprise.

23 b. Herbalife Ltd. employs Herbalife International, Inc. to coordinate the
24 operations of the Herbalife Pyramid in the countries in which
25 Herbalife operates, including determining and coordinating Royalty
26 Points, Royalty Overrides, bonuses, and other incentives. Herbalife
27 International, Inc. also coordinates the global marketing and
28 promotion of the Herbalife Pyramid.

1 c. Herbalife Ltd. employs Herbalife International of America, Inc. as its
2 operational arm of the Herbalife Enterprise in the U.S. Herbalife Ltd.
3 employs Herbalife International of America, Inc. to conduct
4 racketeering activities in the U.S.

5 d. Herbalife employs the Beneficiaries and Promoters to induce new
6 recruits into the Herbalife Pyramid, to induce distributors to purchase
7 Herbalife product, and to induce distributors to recruit additional
8 distributors into the Herbalife Pyramid. The Beneficiaries and
9 Promoters also have an agreement with Herbalife Ltd. mandating that
10 Herbalife will not reform its fraudulent marketing plan without their
11 consent.

12 237. From at least April 2009 and continuing until the present, within the
13 Central District of California and elsewhere, Herbalife International of America,
14 Inc., Herbalife International, Inc., and Herbalife Ltd., in association with each other
15 and in association with the Beneficiaries and Promoters, did knowingly, willfully
16 and unlawfully conduct and participate, directly and indirectly, in the conduct of the
17 affairs of the Herbalife Enterprise through a pattern of racketeering activity.

18 238. From at least April 2009 and continuing until the present, Herbalife
19 International of America, Inc., Herbalife International, Inc., and Herbalife Ltd., with
20 each other and the Beneficiaries and Promoters, executed a *per se* scheme to
21 defraud through a pattern of racketeering made up of distinct acts of mail and wire
22 fraud under 18 U.S.C. §§ 1341 and 1343. The Herbalife Enterprise engaged in and
23 affected interstate and foreign trade. The Herbalife Enterprise transacts business
24 through the instrumentalities of interstate commerce such as telephones, facsimile
25 machines, the internet, email, and the United States mail and interstate commercial
26 carrier to communicate in furtherance of the activities of the Herbalife Enterprise.
27 The Herbalife Enterprise advertises, markets, and sells products and services
28 throughout the United States. The operation of the enterprise continued over several

1 years, including activities in every state, and has affected and damaged, and
2 continues to affect and damage, commercial activity.

3 239. To further the goals of the Herbalife Enterprise, which were to (1)
4 earn money through fraudulent means, (2) entice individuals to become Herbalife
5 distributors, (3) entice individuals to purchase products from Herbalife; (4) entice
6 individuals to recruit others to become Herbalife distributors and profit off those
7 recruits' purchases of Herbalife products, and (5) reap large profits for themselves
8 based on false representations, Herbalife International of America, Inc., Herbalife
9 International, Inc., and Herbalife Ltd. and the Beneficiaries and Promoters engaged
10 in various forms of illegal activity, including (a) mail fraud, (b) wire fraud, and (c)
11 conspiracy.

12 240. The pattern of racketeering activity alleged is distinct from the
13 Herbalife Enterprise. Each act of racketeering activity is distinct from the Herbalife
14 Enterprise in that each is a separate offense committed by an entity or individual
15 while the Herbalife Enterprise is an association of entities and individuals. The
16 Herbalife Enterprise has an ongoing structure and/or organization supported by
17 personnel and/or associates with continuing functions or duties.

18 241. The racketeering acts set out above and below, and others, all had the
19 same pattern and similar purpose of defrauding Bostick and the class for the benefit
20 of the Herbalife Enterprise and its members. Each racketeering act was related, had
21 a similar purpose, involved the same or similar participants and methods of
22 commission and had similar results affecting Bostick and the class. The
23 racketeering acts of mail and wire fraud were also related to each other in that they
24 were part of the Herbalife Enterprise's goal to fraudulently induce Bostick and the
25 class to join the illegal scheme, purchase products, and recruit others to join the
26 scheme.

27 242. Herbalife's and members of the Beneficiaries and Promoters'
28 wrongful conduct has been and remains part of Herbalife Enterprise's ongoing way

1 of doing business and constitutes a continuing threat to the property of Bostick and
2 the class. Without the repeated acts of mail and wire fraud, the Herbalife
3 Enterprise's fraudulent scheme would not have succeeded.

4 243. Revenue gained from the pattern of racketeering activity, which
5 constitutes a significant portion of the total income of Herbalife and the
6 Beneficiaries and Promoters, was reinvested in the operations of the Herbalife
7 Enterprise for the following purposes: (a) to expand the operations of the Herbalife
8 Enterprise through additional false and misleading advertising and promotional
9 materials aimed at recruiting new distributors; (b) to facilitate the execution of the
10 illegal scheme; and (c) to convince current distributors to recruit new distributors,
11 and purchase Herbalife products.

12 244. Bostick and the class were injured by the reinvestment of the
13 racketeering income into the Herbalife Enterprise because they invested billions of
14 dollars of their own money through their purchasing of IBP's, promotional
15 materials, and Herbalife products, all of which were packaged and shipped at
16 inflated charges.

17 245. In connection with promoting and executing their illegal scheme,
18 members of the Herbalife Enterprise knowingly and recklessly placed and caused to
19 be placed in the United States mail or by interstate commercial carrier, or took or
20 received therefrom, matters or things to be sent to or delivered by the United States
21 mail or by interstate commercial carrier comprising, among other things product,
22 invoices, letters, promotional materials, brochures, products and checks to Bostick
23 and the class and received communications between and among themselves through
24 the United States mail, in all fifty states and the District of Columbia. It was
25 reasonably foreseeable that these mailings or receipts would take place in
26 furtherance of the fraudulent scheme.

27 246. In connection with promoting and executing their illegal scheme,
28 members of the Herbalife Enterprise engaged in wire fraud, in violation of 18

1 U.S.C. § 1343, by, among other things, knowingly and recklessly transmitting or
2 causing to be transmitted with wire communications, in interstate and foreign trade,
3 materials promoting the illegal Herbalife Pyramid on internet web sites, radio,
4 satellite radio, television, email, facsimile, telephone, and text messages, including
5 promotional materials, registration information, product information, and invoices.
6 Herbalife and Beneficiaries and Promoters maintain websites on the internet where
7 Herbalife distributors can and do buy products and are given inducements to
8 continue working as distributors within the Herbalife Pyramid. Herbalife maintains
9 various websites hosting promotional videos featuring the Beneficiaries and
10 Promoters promoting the unlawful scheme and other marketing materials featuring
11 the Beneficiaries and Promoters promoting the illegal scheme. Herbalife sent and
12 received these interstate wire communications to and from all fifty states and the
13 District of Columbia.

14 247. Each Defendant has promoted the Herbalife Pyramid and Herbalife
15 Enterprise. Each use of the mail or wire by Defendants and the Beneficiaries and
16 Promoters done in furtherance of the Herbalife Pyramid is an act of racketeering.

17 248. The pattern of racketeering activity through which the affairs of the
18 Herbalife Enterprise were conducted and in which Herbalife and the Beneficiaries
19 and Promoters participated consisted of the following:

20 **Racketeering Act Number One**

21 249. In April 2012, plaintiff Bostick received, through private commercial
22 interstate carrier, the International Business Pack featuring the magazine *Live the*
23 *Good Life! Herbalife*, which promoted the Herbalife Enterprise and contained
24 material false representations regarding the success distributors could achieve
25 through Herbalife by purchasing products and recruiting others to do the same.
26 Herbalife includes *Live the Good Life! Herbalife*, in all International Business
27 Packs and mini-IBP's. Because of his receipt of *Live the Good Life! Herbalife*, and
28 the representations contained therein, Plaintiff Bostick signed up with Herbalife,

1 purchased Herbalife products, and recruited others to do the same. *Live the Good*
2 *Life! Herbalife* was sent by Herbalife International of America, Inc. with the
3 purpose and intent of promoting the Herbalife Enterprise's illegal scheme, all in
4 violation of 18 U.S.C. § 1341.

5 **Racketeering Act Number Two**

6 250. In April 2012, plaintiff Bostick received, through private commercial
7 interstate carrier, the International Business Pack, which promoted the Herbalife
8 Enterprise and the Herbalife Pyramid through the Sales and Marketing plan, and
9 which contained material false representations regarding the success that
10 distributors could achieve through Herbalife by purchasing products and recruiting
11 others to do the same. The Sales and Marketing Plan contained a "Statement of
12 Average Gross Compensation of U.S. Supervisors," which contained deceptive and
13 misleading information regarding the likelihood of success in becoming a
14 Supervisor as well as the average earnings of distributors and the amount of product
15 revenues that are paid out by Herbalife to distributors in the form of Wholesale
16 Profits, Royalty and bonus incomes and incentives. Because of his receipt of the
17 International Business Pack, and the representations contained therein, Plaintiff
18 Bostick purchased Herbalife products, signed up as an Herbalife distributor, and
19 recruited others to do the same. Herbalife International of America, Inc. sent the
20 International Business Pack with the purpose and intent of promoting the Herbalife
21 Enterprise's illegal scheme, all in violation of 18 U.S.C. § 1341.

22 **Racketeering Act Number Three**

23 251. On April 13, 2012, April 26, 2012, May 21, 2012, June 18, 19, 22, 27,
24 2012, and July 20, 2012, Plaintiff Bostick ordered, through interstate wire
25 transmissions over the internet on myherbalife.com, an Herbalife hosted website,
26 Herbalife products associated with Volume Points, which were promoted by the
27 Herbalife Enterprise as the means by which distributors such as Bostick could "pay
28 for his position" and get greater retail profits. Herbalife International of America,

1 Inc. hosted these websites. Bostick paid Herbalife International of America, Inc. for
2 these products using an electronic transfer of funds. Herbalife International of
3 America, Inc. shipped Bostick these products through private commercial interstate
4 carrier. Herbalife International Inc., coordinated through interstate wires on at least
5 a monthly basis following the order the collection and accruing of the Volume
6 Points associated with those purchases. Herbalife Ltd., paid 22% of the SRP from
7 Bostick's purchases in Royalty Overrides, bonuses, and other incentives monthly
8 following Bostick's order. Herbalife Ltd., paid 1% of the SRP from Bostick's
9 purchases in Mark Hughes Bonuses annually. Because of the promised "Volume
10 Points," "Retail Profits," and opportunity to advance up the Herbalife Pyramid,
11 Plaintiff Bostick purchased Herbalife Products, paid for those Herbalife Products,
12 and received those products, using instrumentalities of interstate commerce. This
13 violated 18 U.S.C. §§ 1341 and 1343.

14 **Racketeering Act Number Four**

15 252. On a quarterly basis throughout 2012, and occurring from 2009-the
16 present, plaintiff Bostick, as an Herbalife distributor, received, through the United
17 States mail, *Herbalife Today* featuring the "Royalty Achievers" "President's
18 Team," "Millionaire Team," and "Lifetime Achievers," including members of the
19 Beneficiaries and Promoters, which promoted the Herbalife Enterprise and
20 contained material false representations regarding the success that a distributor
21 could achieve through Herbalife by purchasing products and recruiting others to do
22 the same. Because of his receipt of the *Herbalife Today* and the representations
23 contained therein, Plaintiff Bostick purchased Herbalife products, and recruited
24 others to do the same. Bostick continued to receive Herbalife magazines and
25 catalogs through the United States mail. Herbalife International of America, Inc.
26 sent the Herbalife magazines and catalogs with the purpose and intent of promoting
27 the Herbalife Enterprise's illegal scheme. This violated 18 U.S.C. § 1341.

28 **Racketeering Act Number Four**

253. Throughout 2012 as an Herbalife distributor, plaintiff Bostick received, through email, numerous emails from Herbalife that promoted the Herbalife Enterprise and contained material false representations regarding the success that a distributor could achieve through Herbalife by purchasing products and recruiting others to do the same. Because of his receipt of these emails the representations contained therein, Plaintiff Bostick purchased Herbalife products and tried to recruit others to do the same. Herbalife International of America, Inc. sent those emails with the purpose and intent of promoting the Herbalife Enterprise's illegal scheme. This violated 18 U.S.C. § 1343.

254. Throughout April of 2009 and continuing, Herbalife distributed information by interstate wire transmissions over the internet, such as www.herbalife.com, <https://www.myherbalife.com/>, and <http://www.herbalifemail.com/> In April of 2012 and throughout 2012, Bostick reviewed information on Herbalife's websites. The Herbalife websites promoted the fraudulent scheme through videos of Beneficiaries and Promoters containing material false representations regarding the business opportunity available to distributors, and the wealth that a distributor could get by agreeing to become an Herbalife distributor. Because of the representations on Herbalife's websites, Bostick became an Herbalife distributor and maintained his position as an Herbalife distributor and continued to order Herbalife products and recruit others to do the same. This violated 18 U.S.C. § 1343.

255. In late March to early April 2012, plaintiff Bostick received, through the United States mail or through private commercial interstate carrier, the Internet Business Starter Pack, including the DVD featuring Maurice Smith, which promoted the Herbalife Enterprise and contained material false representations regarding the success that a distributor could get through Herbalife by purchasing

1 products and recruiting others to do the same. Because of his receipt and review of
2 the Internet Business Starter Pack, and the representations contained therein,
3 Plaintiff Bostick purchased Herbalife products, and recruited others to do the same.
4 Beneficiaries and Promoters sent Bostick the Internet Business Starter Pack
5 Herbalife with the purpose and intent of promoting the Herbalife Enterprise's illegal
6 scheme. This violated 18 U.S.C. § 1341.

7 **Racketeering Act Number Seven**

8 256. Throughout 2012, Bostick purchased Herbalife products and was
9 charged a 7% "Packaging and Handling" fee and a shipping fee. Herbalife
10 International of America, Inc. charged Bostick this fee via interstate wire
11 communications and fraudulently represented that such Packaging and Handling
12 fees and shipping fees were owed through the interstate wire communications,
13 when they were not. Because of the representations of Herbalife, Plaintiff Bostick
14 purchased Herbalife products and paid "Packaging and Handling" fees. Herbalife
15 did this with the purpose and intent of profiting off of the Herbalife Enterprise's
16 illegal scheme. This violated 18 U.S.C. § 1343.

17 **Racketeering Act Number Eight**

18 257. Throughout 2012, Beneficiaries and Promoters Tartol, Stanford,
19 Cvitanovich, Susan Peterson, Andre, and other President's Circle, Founder's Circle
20 and Chairman's Club members distributed information by interstate wire
21 transmissions over the internet promoting Herbalife, such as the videos described in
22 paragraphs 43-47, 77, 147-150, 151, 154, 155, and 156. Just as the Smith's video
23 contained material misrepresentations regarding the potential for success, these
24 videos promoted the fraudulent pyramid scheme and contained material false
25 representations regarding the wealth that a recruit or Herbalife distributor could
26 achieve if that recruit became an Herbalife distributor and if a distributor purchased
27 Herbalife products. This violated 18 U.S.C. §1343.

258. Herbalife's and the Beneficiaries' and Promoters' representations and omissions were the proximate cause of Bostick and the class joining the fraudulent scheme and purchasing the products.

260. Defendants and the Beneficiaries and Promoters knew that the misrepresentations and omissions described above in promoting and executing the fraudulent scheme were material because they caused Bostick and the class to join and participate in the illegal scheme.

262. Herbalife's and the Beneficiaries' and Promoters' acts of mail and wire fraud were a proximate cause of the injuries that Bostick and the class suffered. Because of Herbalife's and the Beneficiaries' and Promoters' pattern of unlawful conduct, Bostick and the class lost billions of dollars.

THIRD CLAIM FOR RELIEF

Against All Defendants

265. Herbalife and the Beneficiaries and Promoters are associated with the Herbalife Enterprise. In violation of 18 U.S.C. § 1962(c), Herbalife and the Beneficiaries and Promoters conducted and/or participated in the conduct of the

1 affairs of the Herbalife Enterprise, including participation in activities in
2 furtherance of the Herbalife Defendants' fraudulent scheme, through the pattern of
3 racketeering activity earlier alleged.

4 266. As a direct and proximate result of Herbalife's and the Beneficiaries'
5 and Promoters' violation of 18 U.S.C. § 1962(c), Bostick and the class were
6 induced to, and did, become distributors in the Herbalife Pyramid scheme and
7 purchased billions of dollars of the Herbalife products and recruited others to do the
8 same. Bostick and the class were injured by Herbalife's and the Beneficiaries' and
9 Promoters' unlawful conduct. The funds used to buy Herbalife products constitute
10 property of Bostick and the class within the meaning of 18 U.S.C. § 1964(c).

11 267. Under 18 U.S.C. § 1964(c), Bostick and the class are entitled to treble
12 their damages, plus interest, costs and attorney's fees.

13 **FOURTH CLAIM FOR RELIEF**

14 **(RICO 18 U.S.C. § 1962(d))**

15 **Against All Defendants**

16 268. Plaintiff realleges the previous allegations.

17 269. Herbalife and the Beneficiaries and Promoters agreed to work
18 together in a symbiotic relationship to carry on the illegal scheme. Under that
19 agreement, Herbalife International of America, Inc., Herbalife International, Inc.,
20 Herbalife, Ltd, the Beneficiaries and Promoters and others conspired to violate 18
21 U.S.C. § 1962(a) and (c), in violation of 18 U.S.C. § 1962(d).

22 270. As a direct and proximate result of Herbalife's and the Beneficiaries'
23 and Promoters' violation of 18 U.S.C. § 1962(d), Bostick and the class were injured
24 by Herbalife's and the Beneficiaries' and Promoters' unlawful conduct. The funds
25 used to buy Herbalife products constitute property of Bostick and the class under 18
26 U.S.C. § 1964(c).

27 271. Under 18 U.S.C. § 1964(c), Bostick and the class are entitled to treble
28 their damages, plus interest, costs and attorney's fees.

FOURTH CLAIM FOR RELIEF
(Unfair and Deceptive Practices Claims Under
Cal. Bus. & Prof. Code § 17200, *et seq.*)
Against All Defendants

272. Plaintiff realleges the previous allegations.

273. Plaintiff brings this cause of action for himself for himself and all other Herbalife distributors in the class who signed a distributor agreement with Herbalife governed by California law.

274. Herbalife has engaged in constant and continuous illegal, unfair, and fraudulent business acts or practices, and unfair, deceptive, false and misleading advertising within the meaning of the California Business and Professions Code § 17200, *et seq.* The acts or practices alleged constitute a pattern of behavior, pursued as wrongful business practice that has victimized and continues to victimize thousands of consumers.

275. Under California Business and Professions Code § 17200, an “unlawful” business practice violates California law. Herbalife’s business practices are illegal because they involve the creation and promotion of an illegal pyramid scheme or “endless chain” under California law. Herbalife is engaged in an illegal pyramid scheme or “endless chain” as defined under California Penal Code § 327. Herbalife utilizes this illegal pyramid scheme with the intent, directly or indirectly to dispose of property, in Herbalife products, and to convince distributors to recruit others to do the same.

276. Under California Business and Professions Code § 17200, an “unfair” business practice includes a practice that offends an established public policy, or that is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers. Herbalife’s promotion and operation of an illegal pyramid scheme is unethical, oppressive, and unscrupulous in that Herbalife is duping consumers out of billions of dollars through the illegal pyramid scheme.

277. Under California Business and Professions Code § 17200, a “fraudulent” business practice is likely to deceive the public. Herbalife’s business practice is fraudulent in that they have deceived and continue to deceive the public by misrepresenting their business. Herbalife has made numerous misrepresentations about the income that a recruit or a distributor can realize by becoming a distributor and participating in the scheme and have failed to inform the public they are operating an illegal pyramid scheme. Bostick and the class have relied, and continue to rely on Herbalife’s misrepresentations and omissions to their detriment.

279. Defendants' unlawful, unfair and fraudulent acts and/or omissions, will not be completely and finally stopped without orders of an injunctive nature. Under California Business and Professions Code section 17203, Bostick seeks a judicial order of an equitable nature against all Defendants, including, but not limited to, an order declaring such practices as complained of to be unlawful, unfair, fraudulent and/or deceptive, and enjoining them from undertaking any further unfair, unlawful, fraudulent and/or deceptive acts or omissions related to operating the illegal pyramid scheme.

False Advertising

Against All Defendants

281. Plaintiff brings this cause of action for himself and all other Herbalife distributors in the class who signed a Distributor Agreement with Herbalife governed by California law.

1 282. Defendants' business acts, false advertisements and materially
2 misleading omissions constitute unfair trade practices and false advertising, in
3 violation of the California Business and Professions Code § 17500, *et seq.*

4 283. Defendants engaged in false, unfair and misleading business practices,
5 consisting of false advertising and materially misleading omissions likely to deceive
6 the public and include, but are not limited to:

- 7 a. Defendants failing to disclose to consumers that they were entering
8 into an illegal pyramid scheme;
- 9 b. Defendants misrepresenting the money that a distributor would earn;
- 10 c. Defendants misrepresenting the "Packaging and Handling" fee in
11 connection with the "Shipping" fee. Defendants misrepresented the
12 fee as imposed to recover the costs associated with processing the
13 order, packaging the order, and handling the order. The "Packaging
14 and Handling" and shipping fees are a profit generator for Herbalife,
15 unrelated to the packaging, handling, and shipping of products and
16 designed to maximize Herbalife's overall profit. Herbalife made this
17 misrepresentation to all U.S. distributors.

18 284. Defendants' marketing and promotion of the illegal pyramid scheme
19 and the "Packaging and Handling" fee constitutes misleading, unfair, and fraudulent
20 advertising in connection with their false advertising to induce consumers to
21 purchase products and join the illegal pyramid scheme. Defendants knew or should
22 have known, in exercising reasonable care, that the statements they were making
23 were untrue or misleading and deceived members of the public. Defendants knew or
24 should have known, in exercising reasonable care, that distributors, including
25 Bostick, would rely, and relied on Defendants' misrepresentations and omissions.

26 285. Because of Defendants' untrue and/or misleading representations,
27 Defendants wrongfully acquired money from Bostick and the class members to
28 which it was not entitled. The Court should order Defendants to disgorge, for the

1 benefit of Bostick and all other Herbalife distributors in the class who signed a
2 Distributor Agreement with Herbalife governed by California law their profits and
3 compensation and/or make restitution to Bostick and the class.

4 286. Under California Business and Professions Code section 17535,
5 Plaintiff Bostick and the class seek a judicial order directing Defendants to cease
6 and desist with all false advertising related to the Defendants' illegal pyramid
7 scheme, and "Packaging and Handling" fee, and such other injunctive relief as the
8 Court finds just and appropriate.

9 **PRAYER FOR RELIEF**

10 The named Plaintiff Bostick and the Plaintiff class request the following
11 relief:

- 12 a. Certification of the class;
- 13 b. A jury trial and judgment against Defendants;
- 14 c. Damages for the financial losses incurred by Bostick and by the class
15 because of the Herbalife Defendants' conduct and for injury to their business and
16 property, all because of the Herbalife Defendants' violations of § 1964(a), (c) and
17 (d) and that such sum be trebled under 18 U.S.C. § 1964(c);
- 18 d. Restitution and disgorgement of monies, under the California
19 Business Code;
- 20 e. Temporary and permanent injunctive relief enjoining Herbalife and
21 the Beneficiaries and Promoters working in concert with Defendant Herbalife from
22 further unfair, unlawful, fraudulent and/or deceptive acts, including, but not limited
23 to, false advertising;
- 24 f. The cost of suit including reasonable attorneys' fees under 18 U.S.C.
25 § 1964(c) and under California Code of Civil Procedure § 1021.5 and otherwise by
26 law.
- 27 g. For general, compensatory and exemplary damages in an amount yet
28 to be ascertained; and

1 h. For such other damages, relief and pre- and post-judgment interest as
2 the Court may deem just and proper.

3 DATED: April 8, 2013

FABIAN & CLENDENIN, P.C.

4 

5 Philip D. Dracht

6 Thomas G. Foley, Jr.

7 Robert A. Curtis

FOLEY BEZEK BEHLE & CURTIS, LLP

8 *Attorneys for Plaintiff*

9 **DEMAND FOR JURY TRIAL**

10 Bostick demands a jury trial as provided by Rule 38(a) of the Federal Rules
11 of Civil Procedure.

12
13 DATED: April 8, 2013

14 FABIAN & CLENDENIN, P.C.

15 

16 Philip D. Dracht

17 Thomas G. Foley, Jr.

18 Robert A. Curtis

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Exhibit 2

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**IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

DANA BOSTICK, a California
Resident, ANITA VASKO, a
Pennsylvania resident, JUDI TROTTER,
a Washington resident, BEVERLY
MOLNAR, a Pennsylvania Resident,
CHESTER COTE, a Vermont resident,
on behalf of themselves and all others
similarly situated, and on behalf of the
general public,

PLAINTIFFS,

vs.

HERBALIFE INTERNATIONAL OF
AMERICA, INC., a Nevada
Corporation, HERBALIFE
INTERNATIONAL, INC., a Nevada
Corporation, HERBALIFE, LTD a
Cayman Island Corporation,

DEFENDANTS.

Case No.: 2:13-cv-02488-BRO-RZ

**FIRST AMENDED CLASS
ACTION COMPLAINT**

DEMAND FOR JURY TRIAL

INTRODUCTION TO THE CASE

1
2 1. Herbalife told Plaintiffs Dana Bostick, Anita Vasko, Judi Trotter,
3 Beverly Molnar, and Chester Cote that if they “put in the time, effort, and
4 commitment,” they could make money from retail sales and, by recruiting others to
5 become Herbalife distributors, they could make money off them.

6 2. Plaintiffs all purchased International Business Packs and became
7 distributors. They ordered Herbalife products – enough products that they jumped
8 up the chain and qualified for additional discounts and commissions from potential
9 recruits’ purchases.

10 3. However, they did not make money as promised. Like the hundreds
11 of thousands of Herbalife distributors before and after, they failed. They failed
12 even though they were committed and put in the time and effort. They failed
13 because they were doomed from the start by an Herbalife marketing plan that
14 systematically rewards recruiting distributors over retail sales of product. A
15 marketing plan in which Herbalife pays a significant portion of every dollar that
16 Plaintiffs and other distributors pay for Herbalife product to others in the form of
17 recruiting rewards, regardless of the distributors’ actual retail sales. A marketing
18 plan that pays millions to those few at the top in recruiting rewards at the expense
19 of the many at the bottom.

20 4. Accordingly, Plaintiffs, for themselves, all others similarly situated,
21 and the general public, allege:

TYPE OF ACTION

22
23 5. Plaintiffs sue for themselves and for all persons who were Herbalife
24 distributors from April 2009 until the present under California’s Endless Chain
25 Scheme Law (California’s Penal Code § 327 and California Civil Code § 1689.2),
26 California’s Unfair Competition Law (Business and Professions Code Section
27 17200 *et seq.*), and False Advertising Law (Business and Professions Code §
28 17500), against Herbalife International, Inc., Herbalife International of America,

1 Inc., and Herbalife, Ltd for the operation and promotion of an inherently fraudulent
2 endless chain scheme.

3 **PARTIES**

4 6. Plaintiff Dana Bostick is and at all relevant times was an individual
5 who resides in Los Angeles County, California. Bostick entered into an Agreement
6 of Distribution with Herbalife and became an Herbalife distributor in April of
7 2012.

8 7. Plaintiff Anita Vasko is and at all relevant times was an individual
9 who resides in Chester County, Pennsylvania. Vasko entered into an Agreement of
10 Distribution with Herbalife and became an Herbalife distributor in December of
11 2012.

12 8. Plaintiff Judi Trotter is and at all relevant times was an individual
13 who resides in King County, Washington. Trotter entered into an Agreement of
14 Distribution with Herbalife and became an Herbalife distributor in January of
15 2012.

16 9. Beverly Molnar is and at all relevant times was an individual residing
17 in Allegheny County, Pennsylvania. Molnar entered into an Agreement of
18 Distribution with Herbalife and became an Herbalife distributor in June 2011.
19 Molnar is still registered as an Herbalife distributor although she is not active.

20 10. Plaintiff Chester G. Cote is an individual who resides in Bellows
21 Falls, Vermont. When he became an Herbalife distributor he was a resident of
22 Connecticut. When his Herbalife distributorship expired, he was a resident of
23 Missouri. He became a distributor in 2009.

24 11. Defendant Herbalife International of America, Inc. is and at all
25 material times was a Nevada corporation headquartered in Los Angeles. Defendant
26 Herbalife International of America, Inc. is a wholly-owned subsidiary of Herbalife
27 International, Inc. and an indirectly wholly-owned subsidiary of Herbalife, Ltd,
28 and is employed by those entities to conduct their U.S. operations.

13. Herbalife Ltd. is “one of the largest network marketing companies in the world.” Herbalife Ltd. is and at all material times was a corporation organized under the laws of the Cayman Islands with its corporate headquarters in Los Angeles. Herbalife Ltd. is a publicly held corporation traded on the NYSE as “HLF.”

14. Defendants Herbalife International, Inc., Herbalife International of America, Inc., and Herbalife Ltd. are subject to the jurisdiction of this Court. They have been engaged in continuous and systematic business in California. Defendants have designated agents for service of process in this State or have their principal place of business here and have committed tortious acts in this State. Plaintiff Bostick is a resident of California.

16. At all material times, Herbalife Ltd. owned, controlled, and had common and/or overlapping management with Herbalife International Inc.; Herbalife International, Inc., owned, controlled, and had common and/or overlapping management with Herbalife International of America, Inc.; and Herbalife Ltd. indirectly owned, directly controlled, and had common and/or overlapping management with Herbalife International of America, Inc. Herbalife

1 Ltd., Herbalife International, Inc., and Herbalife International of America, Inc. are
2 the principals, agents, affiliates, partners, co-conspirators or alter-egos of each
3 other, and each acted within the course, scope and authority of such relationships so
4 that Herbalife Ltd., Herbalife International, Inc., and Herbalife International, Inc.,
5 are alter egos of one another and are jointly and severally liable for the acts alleged
6 herein. In Herbalife's dealings with Plaintiffs and the Class, Herbalife generally
7 does not distinguish between the three corporate entities but instead refers to itself
8 singularly as "Herbalife." This Complaint, therefore, also refers to Herbalife Ltd.,
9 Herbalife International, Inc., and Herbalife International of America, Inc.
10 collectively as "Herbalife."

11 17. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c)
12 because a substantial number of the acts and transactions that established the
13 claims of the Plaintiff and the class occurred within this District. Defendants
14 conducted business and solicited business relating to the illegal scheme in this
15 district. Defendants transacted their affairs, resided within California and this
16 judicial district, and Defendants' wrongful acts occurred in this District and have
17 directly impacted the general public of this district.

18 18. Plaintiffs and the class have also executed an "Agreement of
19 Distributorship" with Herbalife, which requires claims to be "resolved exclusively
20 in a judicial proceeding in either the Superior Court or the United States Court,
21 both located in Los Angeles, California."

22 **FACTS**

23 **SUMMARY OF FACTS**

24 19. From 2009-2013, Herbalife made disclosures of "Statements of
25 Average Gross Compensation of U.S. Supervisors" that were deceptive and
26 misleading as to the likelihood that a distributor could reach the level of Supervisor
27 and earn money from the scheme. Herbalife included these disclosures in the Sales
28 and Marketing Plan received by Plaintiffs and the class. Herbalife also posted these

disclosures online. None of these disclosures provided any information that would allow a potential or actual distributor to meaningfully evaluate their likelihood of success in the scheme. Copies of the disclosures made from 2009-February 2013 are attached as **Exhibit A** and are referred to as the “**2008-2011 Statements**”

20. As recently disclosed by Herbalife in February 2013 in their Statement of Average Gross Compensation Paid by Herbalife to United States Distributors in 2012 (attached as **Exhibit B**, and referred to as the “**2012 Statement**”) the majority of Herbalife’s U.S. distributors earn nothing from Herbalife. In 2012, Herbalife’s real business opportunity was:

- a. Herbalife paid nothing to over 87.9% of all distributors;
- b. Herbalife paid \$1 to \$1,000 to 8.43% of all distributors;
- c. Herbalife paid \$1,001 to \$5,000 to 2.2% of all distributors;
- d. Herbalife paid \$5,001 to \$10,000 to 0.5% of all distributors;
- e. Herbalife paid \$10,000 to \$25,000 to 0.393% of all distributors;
- f. Herbalife paid \$25,001-\$50,000 to 0.230% of all distributors;
- g. Herbalife paid \$50,000-\$100,000 to 0.109% of all distributors;
- h. Herbalife paid \$100,001-\$250,000 to 0.092% of all distributors; and
- i. Herbalife paid more than \$250,000 to 0.039% of all distributors.

21. These real numbers are in direct contrast to the deceptive earning claims referenced in Herbalife’s promotional materials, including videos on Herbalife’s website, YouTube, and Herbalife distributors’ websites, often featuring prominent distributors and promoters of the Herbalife scheme, and Herbalife’s prior Statements of Average Gross Compensations distributed to Plaintiffs and the class.

22. An undisclosed fact is that there is little to no opportunity for an Herbalife distributor to earn a “retail profit” on the sales of Herbalife products because Herbalife sets the “Suggested Retail Price” (“**SRP**”) at a price so high that few if any Herbalife distributors can earn retail profits.

23. Herbalife sets the SRP so high because for every dollar a distributor paid Herbalife for Herbalife product (not including packaging, handling, shipping, and tax) Herbalife paid out \$0.46 to \$0.64 to its top distributors as recruiting bonuses. Herbalife made these payments upline whether or not the distributor sells the product at retail and whether or not the distributor sells the product at SRP.

24. Besides setting the SRP at an inflated price, Herbalife charges its distributors a 7% fee for “Packaging and Handling” and a 2.5% to 4% fee for shipping, based solely on the inflated SRP and not on Herbalife’s actual or estimated costs for packaging, handling, and shipping. This makes it even harder for a distributor to make retail profits as it drives their retail price even higher.

25. An undisclosed fact (from at least April 2009 to February 2013) is that a large majority of all distributors (approximately 71%) make few if any retail sales and are forced to self-consume the Herbalife products.

26. An undisclosed material fact is that the vast majority of participants in Herbalife’s endless chain scheme drop out within one year of becoming Herbalife distributors and have usually lost most, if not all, of their investment and thousands of dollars expended to build their supposed “business opportunity.”

27. To avoid being an endless chains scheme, a multi-level marketing plan must have effective provisions to ensure that its distributors sell most products to consumers not a part of the marketing system. Herbalife does or did not employ or enforce such provisions.

THE HERBALIFE SALES AND MARKETING PLAN

28. As a direct-sales company, Herbalife operates a multi-level distribution system – the Herbalife Sales and Marketing Plan – relying on individual distributors to market, promote, and sell its products.

29. A copy of the Herbalife “Sales and Marketing Plan and Business Rules” (“**Sales and Marketing Plan**”) purchased by Bostick as part of his

1 International Business Pack is attached as **Exhibit C**. The Sales and Marketing
2 Plan is an incredibly complex set of rules and regulations.

3 30. Anyone can become an Herbalife distributor if they purchase an
4 Herbalife International Business Pack (“**IBP**”) or a mini-IBP at a cost of \$95.95 or
5 \$57.75 respectively, apply to become a distributor, and are sponsored by an
6 existing Herbalife distributor.

7 31. Herbalife recruits prospective participants by offering them the
8 opportunity to participate in a “tested proven business plan” “designed to
9 maximize rewards for effort and provide substantial and ongoing income.”

10 32. Herbalife recruits prospective participants by promising them
11 “Immediate Retail Profit,” “Daily Wholesale Profit,” “Monthly Override Income,”
12 “Monthly Production Bonuses,” “Annual Bonuses” for Top Achievers, and
13 “Special Vacations and Training Events” that will “teach you how to meet your
14 goals, increase your earning power and build an international business without
15 leaving the comfort of your own home!”

16 33. Herbalife’s distributors promise recruits and other distributors that
17 they can “be your own boss – take charge of your life,” achieve “financial
18 freedom,” earn “extra income,” “retirement/pension,” and “leave a legacy.”

19 34. Herbalife recruits prospective participants by boasting that the
20 Herbalife Sales and Marketing Plan is “[t]he best Marketing Plan in the industry”
21 and that it pays out up to 73% of product revenues to distributors in “Retail and
22 Wholesale Profits, Royalty and bonus income and incentives.” Herbalife stresses:

23 Each Distributor’s success is dependent on two primary factors: The time,
24 effort and commitment a Distributor puts into their Herbalife business and
25 the product sales made by a Distributor and their downline organization.
26 These two factors raise the importance of a Distributor’s responsibility to
27 train, support and motivate their downline organization.
28

1 35. Herbalife divides the “73% of product revenue” by apportioning 23%
2 of the SRP to “Royalty, bonus income, and incentives” and 50% to “Retail and
3 Wholesale Profits.” Herbalife’s 73% payout claim depends on a distributor
4 reselling the product at 100% of the SRP.

5 36. By basing these “Retail and Wholesale Profits, Royalty and bonus
6 income and incentives” off the SRP, Herbalife masked that for every dollar the
7 purchasing distributor spent on Herbalife product, Herbalife paid from \$0.46 to
8 \$0.64 upline in the form of recruiting rewards.

9 37. Because so much money is paid upline in recruiting bonuses so that
10 Herbalife can retain its “most active and productive distributors,” Herbalife’s SRP
11 is an inflated price that bears no relation to the actual market price distributors can
12 get for Herbalife’s products in sales to retail customers.

13 **BOSTICK IS RECRUITED TO HERBALIFE**

14 **“Position Determines the Pay,” “You Determine Your Position”**

15 38. Dana Bostick responded to an internet advertisement for a “trial
16 offer.” It offered an “Internet Business Starter Pack” where Bostick paid \$9.95 in
17 Shipping and Handling and would be charged an additional \$39.95 if he did not
18 return the package within fourteen days. Interested in earning monthly and residual
19 income, Bostick signed up for the pack. The Internet Business Starter Pack was
20 mailed to Bostick sometime between late-March and early-April 2012.

21 39. Bostick reviewed the pack, which is attached as **Exhibit D**, and the
22 DVD video enclosed in that pack, which revealed the “business” as Herbalife.

23 40. Bostick watched the DVD. A spokeswoman explained that within
24 Herbalife, “the position determines the pay - meaning, the higher you start the
25 more money you can make.”

26 41. On the video, Maurice Smith reiterates that “position determines the
27 pay” and that “you determine your position.” Smith tells viewers that an average
28 Herbalife distributor earns “between \$100 and \$300 per month – part-time.” And

1 Success Builders “have the opportunity to earn between \$400-\$600 part-time.”
2 Smith encourages recruits to become a “Supervisor,” a level in the Herbalife
3 endless chain that requires a significant purchase of product but where distributors,
4 if they have a downline, can start to earn recruiting rewards:

5 Supervisor is the highest level you can choose to position yourself at
6 today. And, this is very important to know, Supervisor is the gateway
7 to the rest of the levels of the marketing plan. You cannot get to the
8 higher income levels without first becoming a Supervisor.

9 42. The graphics on the video display that Supervisors can earn between
10 \$500-\$1500 a month. Smith explains that a World Team member can earn \$1,500-
11 \$3000 a month, GET Team member can earn \$3,500-\$7,000 a month, Millionaire
12 Team can earn between \$7,500-\$15,000 a month, and President’s Team members
13 typically earn between \$25,000-\$100,000+ a month. Images of Smith’s
14 presentation and representations of potential distributor’s earnings are attached as
15 **Exhibit E**.

16 43. Smith explains why it is so important to become a Supervisor: “It’s
17 the highest paying position that you can start at today. You’ve set yourself up for
18 retail profits of 50% so you’ve doubled your money for the same work you’ve
19 been doing.” A Supervisor is at the “gateway to the rest of the marketing plan,”
20 because Supervisors can begin to get royalties, production bonuses, spontaneous
21 bonuses, 1% annual bonus pool, and paid vacations.

22 44. Bostick viewed this video, Herbalife’s website, and various other
23 Herbalife related websites. Upon viewing these materials, Bostick believed that
24 retailing Herbalife products and recruiting distributors would be a way for him to
25 build a business where he could earn both monthly income and residual income.

26 45. Bostick ordered and paid for an IBP. It was sent to him by Federal
27 Express. The IBP contained the magazine, Live the Good Life! Herbalife (relevant
28 portions of which are attached as **Exhibit F**) and four distributor workbooks:

1 “Your Business Basics” (relevant portions of which are attached as **Exhibit G** to
2 the Complaint); “Using and Retailing Your Products”; “Building Your Business”
3 (relevant portions of which are attached as **Exhibit H** to the Complaint); and the
4 “Sales & Marketing Plan and Business Rules” (**Exhibit C**). Bostick reviewed the
5 IBP and the materials in the IBP.

6 46. On April 6, 2012, Bostick went online and signed an Agreement of
7 Distribution. That agreement is attached as **Exhibit I**.

8 47. Bostick worked hard to build his business. He bought and used
9 products himself so he would know what he was selling. He set up three websites.
10 Two were set up to sell Herbalife products to the public and one was to recruit
11 downline distributors. He paid for “coaching” sessions where the coaches “taught”
12 him how to recruit downline distributors to build a downline. In spite of his hard
13 work, the only recruit he made was a long-time friend.

14 48. On April 6, and 26, 2012, May 21, 2012, June 18, 19, 22, and 27,
15 2012, and July 20, 2012, Plaintiff Bostick ordered products from Herbalife.
16 Besides the purchase price for product, Herbalife added a 7% “Packaging and
17 Handling” fee and a shipping fee of anywhere from 2.5% to 4%, solely based on
18 the SRP of the product and not on the actual or estimated costs.

19 49. On June 22, 2012, he attempted to “pay for his position” by
20 coordinating with his friend. They were supposed to both purchase enough
21 product to become a Supervisor, the “gateway to the rest of the marketing plan.”
22 On June 22, 2012, he made a single order that cost him \$2,133.72. Bostick’s
23 downline did not make the purchase and Bostick did not advance to Supervisor.

24 50. When he tried to resell the product he purchased to qualify as a
25 Supervisor, Bostick learned that there was little opportunity for him to earn
26 monthly income or residual income with Herbalife. The SRP alone was an
27 uncompetitive price in the market, and, when Bostick would add the shipping,
28 handling, and packaging fees to recoup his costs, the retail price was so high that

1 there were virtually no retail purchasers willing to pay the full retail price. And
2 other distributors were selling Herbalife products online on Craigslist and EBay at
3 or below their cost, making retail profits in the amounts promised by Herbalife
4 even more difficult to achieve.

5 51. As to the over \$3,000 (SRP) worth of Herbalife products that Bostick
6 purchased that he has not self-consumed or given away, Plaintiff Bostick has tried
7 to sell it on Craigslist at or around his purchase cost.

8 ANITA VASKO IS RECRUITED TO HERBALIFE

9 The Nutrition Club

10 52. Anita Vasko was looking to reenter the workforce after being a
11 homemaker for some years. With two children in their early teens and with a
12 health-coach certificate, she went to a “nutrition club” operated by another
13 Herbalife distributor in a nearby town.

14 53. She told the owner of the Herbalife nutrition club she was looking for
15 a job. He explained the multi-level-marketing concept to her and she thought it
16 sounded interesting. Late December 2012, Vasko purchased an IBP and signed the
17 distributor agreement.

18 54. She reviewed the IBP and she thought it sounded and looked like a
19 good opportunity. Based on the representations in the IBP, including the
20 Statement of Average Gross Compensation, she thought that she could earn retail
21 profits by reselling Herbalife products and that she could recruit other distributors
22 and earn profits off of their purchases and sales. She wanted a part-time and
23 eventual full-time job and Herbalife sounded like it would provide her with that
24 opportunity.

25 55. She kept “training” at the nutrition club for around four months and
26 became familiar with the products and how to prepare the shakes by consuming
27 them herself.

1 56. In late January/early-February of 2013, Vasko decided to open her
2 own nutrition club. She sub-leased a prime commercial location in Westchester,
3 Pennsylvania. The rent was \$725 a month plus common area maintenance charges
4 plus utilities for seven months. She then entered into a three year lease and from
5 August 2013 until January 2014 she shared the rent, which cost a total of \$1500 a
6 month with another Herbalife distributor to operate the club. When she opened the
7 Nutrition club in the winter of 2013, Vasko became a Supervisor, purchasing
8 enough products to qualify under the one-month qualification.

9 57. The rules for operating the nutrition club made it hard for her to get
10 business. She could only have people come into her club by “invitation,” so she
11 would have to go on the street to invite people into the club. Few people
12 responded to her invitation. Under the rules, there could be no sign indicating she
13 was affiliated with Herbalife. She had to place curtains on the windows of the
14 storefront as well. The logo they initially selected was rejected by Herbalife as
15 being “too similar” to Herbalife’s logo.

16 58. Vasko worked six days a week and sometimes seven, often from
17 eight a.m. to late in the evening. In November of 2013 she had a meeting with her
18 upline distributor and her husband regarding the lack of sales and the lack of
19 interest in the club. Her upline suggested she continue to hand out invites on the
20 street. Later her upline stopped calling her back when she sought additional help.

21 59. When Vasco was actively working on her Herbalife distributorship,
22 she had never seen a copy of the Statement of Average Gross Compensation for
23 2012, Exhibit B. Vasco Last year Vasko calculated a loss of approximately
24 \$12,000 in 2013 on her Herbalife nutrition club, not including the hundreds to
25 thousands of hours spent working at the club. Vasko is also stuck with unopened
26 Herbalife product that cost her over \$2,000 to purchase and that she cannot return
27 to Herbalife because it is past the one-year return policy.

JUDI TROTTER IS RECRUITED TO HERBALIFE

Retirement Gone Wrong

60. In January of 2012 Judi Trotter saw an advertisement about how to make money at home. She had just retired but her husband was still working. She was bored and looking to earn some extra money so she got in contact with the company, Online Business Systems.

61. The person recruiting her gave her a high pressure sales pitch, telling her that if she did not have the money to join she should call her bank to get a credit card limit raised. On the first call with her upline, Trotter signed up and paid for enough products to immediately qualify as a Supervisor.

62. The product and the IBP were delivered to her. When Trotter reviewed the IBP, including the statement of average gross compensation it contained, she believed the IBP when it said Herbalife provided a full-time or part-time opportunity. After reviewing the IBP, including the representations of income, testimonials, and the Statement of Average Gross Compensation, she thought "I could do this." Based on the representations of the IBP, Trotter thought she would be able to make retail profits and recruit other Herbalife distributors and earn money off of their purchases and sales.

63. She bought leads of prospective recruits from Online Business System. She signed up other recruits. She sent the product that she purchased to the people that she signed up from her leads – they all got a selection of products provided by Trotter and paid for it as part of their sign up, which cost (including the IBP) the leads around \$200. All but one of them cancelled.

64. Trotter reached the level of "World Team" without ever filling out a 10 Customer Form or a 70% Rule Form. She earned "mailbox money," or a Royalty Override check, and she never filled a 10 Customer Form or a 70% Form. Trotter reached the level of World Team without making 10 retail sales.

1 65. Trotter felt uncomfortable following the Online Business System
2 scripts as she felt they were too high pressure. The leads that she purchased were
3 usually very poor quality leads – the leads would be very ignorant about starting a
4 business. By March 2012 she decided she could not in good conscious recruit any
5 more people and that she needed to try to resell product in order to work off the
6 debt she had incurred.

7 66. Sometime in May 2012 she went to a conference sponsored by
8 Herbalife. There were Herbalife ethics people there, and she told them about her
9 concerns with recruiting and her difficulty in retailing. When they asked how she
10 became a Supervisor, she told them that she was following the Online Business
11 System way. The Herbalife representatives told her that they did not condone
12 what Online Business Systems was doing.

13 67. After that conference, Trotter went back and read her IBP to see if
14 Online Business Systems was legitimate. She found language allowing business
15 and methods tools, which she took to mean that Online Business System was not
16 prohibited under the Herbalife rules. She tried for another couple of months to sell
17 the product that she had not personally consumed or provided to her “leads,” and
18 found that it was very difficult to sell. When she ultimately tried to sell her
19 product on Craigslist she found that people were heavily discounting the product.
20 At this point she had lost \$8842.11 in pursuing her Herbalife distributorship for
21 product, leads, booklets to send to leads, websites, and other tools.

22 68. Trotter resigned from her distributorship in the fall of 2012 and
23 returned the product she had leftover to Herbalife. Trotter did not realize that she
24 had a cause of action against Herbalife until she learned of this action.

25 **BEVERLY MOLNAR IS RECRUITED TO HERBALIFE**

26 **The Lead Game**

27 69. In June 2011, Beverly Molnar ordered the \$9.95 Online Business
28 System brochure and DVD. She was looking to make some money on the side.

1 She called the upline and from that call she jumped into the program, buying the
2 IBP and enough volume points to become a Supervisor.

3 70. Molnar reviewed the IBP when it was sent to her. She read the
4 statement of average gross compensation, income projections, and testimonials
5 and thought that she could make money as a Supervisor, both by selling products
6 for retail profit and by recruiting distributors underneath her.

7 71. The first six months she tried hard to sell product to earn back her
8 initial investment. But she had to give purchasers significant discounts off the
9 suggested retail price in order to sell the product. After that first large purchase,
10 Molnar stopped trying to resell product and just consumed it.

11 72. She also purchased leads from Online Business System. Molnar was
12 required to purchase packages to send to the leads, which cost a fee for each lead.
13 Molnar had little success with the leads. Online Business System would handle all
14 the shipping of the lead packages and DVD's, but when the leads would return
15 product and the lead package, Molnar was required to pay for their return. The
16 leads that Molnar purchased were often of low quality, with phone numbers and
17 emails that were frequently wrong. If Molnar did not contact the lead within two
18 weeks she lost the lead. Molnar estimates she spent over \$11,000 on leads and on
19 other bundled services, such as websites, training, and coaching.

20 73. Molnar stopped buying leads over a year ago and is trying to pay-
21 down her credit card debt incurred in chasing the Herbalife opportunity. Molnar
22 did not realize that she had a cause of action against Herbalife until she learned of
23 this action.

24 **CHESTER COTE IS RECRUITED TO HERBALIFE**

25 **“Closet Qualified”**

26 74. In 2009 Chester Cote was laid off. He saw an online opportunity and
27 he called about it. A man from Minnesota returned Cote's call and convinced
28 Chester to join Herbalife as a distributor.

1 75. Cote bought an IBP and reviewed it. He liked what he saw and read.
2 Based on his review of the IBP and the representations contained in it, including
3 the Statement of Average Gross Compensation, Cote thought that Herbalife would
4 be a good way to earn money by selling products and earning retail profits and by
5 recruiting other distributors and earning based on those distributors purchases and
6 sales.

7 76. Cote bought enough Herbalife product in a single purchase to
8 become a Supervisor.

9 77. Cote had trouble recruiting his friends and family into Herbalife.

10 78. Cote went to two training programs – one in Minneapolis, Minnesota
11 and one in Phoenix, Arizona. There, Herbalife representatives gave them pep talks
12 about how much money they could earn being Herbalife distributors.

13 79. Cote wanted to earn the kind of money these people described, so he
14 tried to recruit online. He also sent out fliers, which he purchased from senior
15 members in his upline.

16 80. Cote tried to sell products online, but he found it was difficult
17 because the prices were depressed by other distributors who were selling their
18 products at a significant discount off SRP. Cote still has canisters of Herbalife
19 product that he would like to return but the return period has ended. Cote did not
20 realize he had a cause of action against Herbalife until he learned of this action –
21 he thought his failure as an Herbalife distributor was due to his own shortcomings
22 as an Herbalife distributor.

23 81. All of these Plaintiffs' experience is the same as most Herbalife
24 distributors. As Herbalife's 2012 Statement shows, most Herbalife distributors
25 earn nothing from Herbalife and only 33% of Newly Qualified Supervisors
26 requalify.

27 82. Plaintiffs' failure and the other distributors' failure are not for lack of
28 time, effort, or commitment to Herbalife. These failures are due to a marketing

1 plan that, by its design, systematically rewards recruiting over retailing and
2 systematically rewards those distributors at the top at the expense of the many
3 distributors at the bottom.

4 **MECHANICS OF THE SALES AND MARKETING PROGRAM**

5 83. Within the Herbalife endless chain, there are 11 levels of Herbalife
6 distributors. The bottom four categories are Distributors,¹ Senior Consultants,
7 Success Builders, and Qualified Producers. Herbalife calls the bottom four
8 categories “Non-Sales Leaders” (“**NSL**”). The top seven categories are
9 Supervisors, World Team, Global Expansion Team, Millionaire’s Team,
10 President’s Team, Chairman’s Club, and Founders Circle. Herbalife calls these
11 distributors “Sales Leaders” (“**SL**”).² Bostick was an NSL and Vasko, Trotter,
12 Molnar, and Cote were all SLs.

13 84. Herbalife assigns a new distributor to an existing “line of
14 sponsorship” to which the recruiting distributor already belongs. A line of
15 sponsorship includes a hierarchy of distributors starting with the newly-recruited
16 distributor and proceeding by seniority up to a distributor heading the line of
17 sponsorship. These distributors at the heads of the lines of sponsorship are
18 Beneficiaries and Promoters.

19 85. Junior (or “downline”) distributors purchase products from more
20 senior (or “upline”) distributors within their line of sponsorship or from Herbalife
21 directly. Herbalife pays bonuses upline to distributors based on purchases from
22 Herbalife by downline distributors. Any distributor at any level may sponsor new
23 distributors.

24 ¹ The use of a lower-case “distributor” refers to all Herbalife distributors,
25 regardless of level. The use of a capitalized “Distributor” refers to the first-level
26 Herbalife distributor.

27 ² Members of the Millionaire’s Team, President’s Team, Chairman’s Club and
28 Founders Circle are the primary beneficiaries and promoters of the Herbalife
endless chain (“**Beneficiaries and Promoters**”).

1 86. Herbalife protects its distributors' downlines. A distributor who
2 wants to change their sponsor must obtain a written, notarized release from their
3 Sponsor and upline distributors. Herbalife can still deny the request. The
4 distributor changing sponsors can only keep their downline if their upline agrees.

5 87. To move up the Herbalife endless chain and qualify for higher levels
6 of compensation, Herbalife requires a distributor to "achieve" (either through their
7 own purchases of Herbalife products or through their downline's purchases)
8 specific "Volume" during specified time-periods.

9 88. Herbalife calculates a distributor's Volume by using "**Volume**
10 **Points.**" Volume Points are point values that Herbalife assigns to each of their
11 products. In the U.S., Herbalife uses a Volume Point to dollar ratio to assign
12 Value Points to specific products. It displays a product's Value Points on the price
13 sheet.

14 89. In 2012 the dollar to Volume Point ratio ranged from approximately
15 \$1:0.57VP to approximately \$1:0.905VP.

16 90. If a distributor orders products the distributor collects "Personally
17 Purchased Volume" points³ The Volume Points that a distributor accumulates
18 either through Personally Purchased Volume or through the Volume Points
19 purchased by the distributor's downline become the distributor's sales production.
20 Herbalife uses Volume Points to qualify distributors for higher levels, sales
21 commissions, royalties, bonuses, and other incentives and benefits. Herbalife
22 calculates Volume Points monthly.

23
24
25
26 ³ "**Personally Purchased Volume**" is defined as "The volume purchased directly
27 from Herbalife using your [the distributor's] Herbalife Identification Number." All
28 defined terms from the Sales and Marketing Plan are found on Exhibit C, pp. 21-
22.

**NON-SALES LEADERS: DISTRIBUTORS, SENIOR
CONSULTANTS, SUCCESS BUILDERS, & QUALIFIED PRODUCERS**

Distributors (NSL)

91. Herbalife calls its first-level distributors “Distributors.”

92. A Distributor buys Herbalife products at a 25% discount off the SRP whether for personal use or resale. In its promotional materials, Herbalife characterizes the 25% discount as an opportunity for the Distributors to earn 25% in retail profits from reselling the Herbalife products.

93. Prior to the filing of the Complaint in this case, if a Distributor purchased a product with an SRP of \$100, the cost was \$75. Herbalife paid the Distributor’s upline \$48 of the \$75 cost – \$25 upline in “Wholesale Profits” and \$23 in Royalty Overrides, bonuses, and other incentives – even if the Distributor could not resell the product for the \$100 SRP. For a Distributor’s purchase, \$0.64 out of every dollar paid for Herbalife product went upline (\$0.33 in Wholesale Profits and \$0.31 in royalties, bonuses, and incentives).

Senior Consultants (NSL)

94. Herbalife promotes a Distributor to “Senior Consultant” if they buy 500 or more Personally Purchased Volume Points, or, if their recruited distributors provide 500 Volume Points in “Downline Volume.”⁴

95. Senior Consultants buy Herbalife product at a 35% discount off SRP and are eligible for a 10% commission off their downline Distributor’s purchases, so long as that distributor remains a Distributor. Herbalife calls this commission “Wholesale Profit.”

96. A Distributor can also qualify for Senior Consultant if the distributor gets 2,000 Volume Points in a month, either through Personally Purchased

⁴ **“Downline Volume”** is defined as “As a non-Supervisor, Downline volume is based on volume which is placed by your downline Distributors directly from Herbalife or order between 25% to 42% discount.

1 Volume or through Downline Volume. That Senior Consultant gets a 42%
2 discount off of SRP, both on the qualifying purchase and on purchases in the
3 qualifying month. The next month their discount is 35% off of SRP.

4 97. A Distributor can become a Senior Consultant without purchasing or
5 reselling Herbalife product if the Distributor recruits downline distributors and
6 those distributors purchase the required 500 or 2,000 Volume Points in a month.

7 98. Prior to filing the Complaint in this action, if a Senior Consultant
8 with a 35% discount purchased a product with an SRP of \$100, the cost was \$65.
9 Herbalife paid the upline \$38 of the \$65 cost – \$15 in “Wholesale Profits” and \$23
10 in Royalty Overrides, bonuses, and other incentives – even if the Senior
11 Consultant does not resell the product. For a Senior Consultant’s purchase with a
12 35% discount, \$0.58 out of every dollar paid for Herbalife product went upline
13 (\$0.23 in Wholesale Profits and \$0.35 in royalties, bonuses, and incentives).

14 **Success Builder (NSL)**

15 99. A Distributor or Senior Consultant becomes a “Success Builder” if
16 the distributor places a single order of 1,000 Personally Purchased Volume Points.
17 Success Builders get a 42% discount on that order and on other purchases in the
18 same month they qualify. A Success Builder becomes a Senior Consultant with a
19 35% discount the next month.

20 100. Herbalife and the Beneficiaries and Promoters encourage Distributors
21 to become Success Builders to get “higher retail profits” because of the discount.
22 In the video called “Senior Consultant & Success Builder,” which is hosted at
23 <http://www.youtube.com/watch?v=8b2pyw3A6FA> and on the official Herbalife
24 website www.video.herbalife.com, Beneficiaries and Promoters John Tartol and
25 Leslie Stanford encourage distributors to become Success Builders. Tartol
26 explains in minutes 5:20-6:18 how a distributor can “qualify right away” for a
27 35% discount “with just one order” and “enjoy a substantial 42% discount
28

1 immediately.” He tells distributors that “this will get you the highest discount for
2 the least expenditure.”

3 **Qualified Producer (NSL)**

4 101. A Distributor, Senior Consultant, or Success Builder becomes a
5 “Qualified Producer” if the distributor purchases 2,500 Personally Purchased
6 Volume Points within one to three months, or the distributor can combine up to
7 1,000 Downline Volume (Volume placed by downline distributors) Points and
8 1,500 Personally Purchased Volume Points in a single month.

9 102. A Qualified Producer gets a 42% discount off SRP for a full year and
10 qualifies for up to 7% to 17% of commissions on the Qualified Producer’s
11 downline distributors’ (below the level of Qualified Producer, Success Builder, or
12 Senior Consultant with a 42% discount) purchases.

13 103. Prior to the filing of this action, if a Qualified Producer (or Senior
14 Consultant or Success Builder) with a 42% discount purchased a product with an
15 SRP of \$100, the cost was \$58. Herbalife paid the upline \$31 of the \$58 cost – \$8
16 upline in “Wholesale Profits” and \$23 in Royalty Overrides, bonuses, and other
17 incentives – even if the Qualified Producer does not resell the product. For
18 distributors with a 42% discount, \$0.53 out of every dollar paid for Herbalife
19 product went upline (~\$0.13 in Wholesale Profits and ~\$0.40 in royalties, bonuses,
20 and incentives).

21 104. According to Herbalife’s recently revised 2012 Statement,
22 Distributors, Senior Consultants, Success Builders, and Qualified Producers (all
23 NSLs) and Supervisors without a downline made up 83% of their total distributors
24 in 2012.

25 105. Unless an NSL is participating in the Herbalife Advantage Promotion
26 (an automatic monthly product shipment program) and has orders for 12
27 consecutive months, the NSL must pay an Annual Processing Fee of \$15.00 on
28 their “anniversary date” to remain an Herbalife distributor. Supervisors also must

1 pay an Annual Processing Fee of \$79.99. Herbalife has described this fee as
2 necessary because “The fee keeps you on our system by letting us know that you
3 are still enjoying working your Herbalife business. If it is not paid then your
4 Distributorship is subject to deletion.”

5 106. In Herbalife’s 2004 and 2005 10-Ks to investors, Herbalife disclosed
6 that for the reporting year, “more than 90% of our distributors that are not
7 supervisors turned over.” Herbalife stopped disclosing the turnover rate of Non-
8 Sales Leaders in their 10-Ks and never disclosed turnover rates of its NSL’s to
9 Plaintiffs and members of the class. Based on the 2004 and 2005 disclosures and
10 Plaintiff’s own experience with distributors in his own upline and downline,
11 Plaintiff is informed and believes that the non-Supervisor turnover rate for 2009-
12 2013 is approximately 90%.

13 **SALES LEADERS: SUPERVISORS, WORLD TEAM, TAB TEAM,**
14 **PRESIDENT’S TEAM, FOUNDER’S CIRCLE, CHAIRMAN’S CLUB**
15 **Supervisor (SL)**

16 107. Becoming a “Supervisor” means a distributor moves from being a
17 “Non-Sales Leader” to a “Sales Leader,” or “**SL.**”

18 108. According to Herbalife’s Statements of Average Compensation
19 distributed in 2009-2013 (**Exhibit A**), approximately 25% of Herbalife’s
20 Distributors become Supervisors and above.

21 109. A distributor can qualify to become a Supervisor in one of three
22 ways:
23
24
25
26
27
28

1 110. **One-Month Qualification** – by “achieving” 4,000 Volume Points in
2 a month. A minimum of 1,000 of these Volume Points must be “Unencumbered
3 Volume”⁵

4 111. **Two-Month Qualification** – by “achieving” 2,500 Volume Points in
5 each of two consecutive months. A minimum of 1,000 of these Volume Points
6 must be “Unencumbered.”

7 112. **Accumulated Qualification** – by buying 5,000 Personally Purchased
8 Volume Points within 12 months or 1,000 Downline Volume Points with 4,000
9 Personally Purchased Volume.

10 113. Under the One and Two Month Qualifications, a distributor can
11 qualify as a Supervisor without purchasing or reselling any Herbalife products if
12 1000 of the downline Volume Points are Unencumbered.

13 114. A distributor can also qualify for Supervisor under any method
14 making no retail sales.

15 115. A distributor who does not become a Supervisor before their
16 downline distributor becomes a Supervisor has one year to become a Supervisor.

17 _____
18 ⁵ **“Unencumbered Volume”** is defined as “all volume produced by anyone in [a
19 distributor’s downline], down to the first qualified Supervisor who achieves less
20 than 2,500 Volume Points in one Volume Month,” plus all of the distributor’s
21 “Personal Volume,” and which is volume that is not used by anyone else for
Supervisor qualification purposes.

22 **“Personal Volume”** is defined as “The volume purchased by you as a Fully
23 Qualified Supervisor and all others in your downline organization, excluding any
24 50% orders by Qualifying Supervisors and Qualified Supervisors.”

25 **“Encumbered Volume”** is all volume produced by any downline distributor
26 qualifying for Supervisor, down to the first qualified Supervisor, who achieves
27 2,500 Volume Points or more at a 25% to 42% discount in one Volume Month.
28 The basic difference between the two forms of volume is that Unencumbered
Volume is volume that no other distributor uses to qualify to become a Supervisor.

1 Otherwise, Herbalife takes away that Supervisor and that Supervisor's downline
2 from the distributor and gives them to the first upline Supervisor.

3 116. Herbalife requires that a Qualifying Supervisor be sponsored by the
4 first upline Supervisor. The Sponsoring Supervisor must match the Qualifying
5 Supervisor's Volume Points in the qualifying month with "Total Volume."⁶

6 117. A Sponsoring Supervisor can sponsor the Qualifying Supervisor
7 without purchasing or reselling any Herbalife products if their downline generates
8 sufficient Total Volume to match the Qualifying Supervisor's Volume Points in
9 that qualifying month.

10 118. If the Supervisor sponsors a distributor who becomes a Supervisor
11 that Supervisor is called a first-level Supervisor. If that first-level Supervisor
12 sponsors a Supervisor that Supervisor becomes the original Supervisor's second-
13 level Supervisor. If that second-level Supervisor sponsors a Supervisor that
14 Supervisor becomes the original Supervisor's third-level Supervisor. Supervisors
15 can earn royalties on all three of these downline level Supervisors' volume.

16 **Benefits for Supervisors**

17 119. A Supervisor can purchase Herbalife's product at a 50% discount off
18 the SRP and can earn from 25% - 15% - 8% in commissions from their
19 downline's purchases. The commissions decrease as the Supervisor's downline
20 distributors' discounts increase – 25% - 35% - 42%.

21 120. Prior to the filing of this action, if a Supervisor purchases a product
22 with an SRP of \$100, the cost was \$50. Herbalife paid the upline \$23 of that \$50
23
24

25 ⁶ **"Total Volume"** is defined as "the combined total of Personal Volume plus
26 Group Volume."

27 **"Group Volume"** is defined as "Orders purchased at a temporary 50% discount,
28 by Qualifying Supervisor(s) in a Supervisor's personal organization."

121. For a Supervisor's purchase, \$0.46 out of every dollar paid for Herbalife product went upline in Royalty Overrides, bonuses, and other incentives.

123. A Royalty Override is a commission that a Supervisor receives on the Volume Points accrued by that Supervisor's downline (the First, Second, and Third Level Supervisors). In its 10-Ks, Herbalife calls Royalty payments "compensation to distributors for services rendered including the development, retention and the improved productivity of their sales organizations."

Royalty Override Sliding Scale	
Your Total Volume Points	Royalty Override Earning %
0-499	0%
500-999	1%
1,000-1,499	2%
1,500-1,999	3%
2,000-2,499	4%
2,500 plus	5%

Royalty Override Example			
YOU	2,500 Volume Points	=	Your Total Royalty Override = 1,500 Royalty Points
First-Level Supervisor	10,000 Volume Points	=	5% = 500 Royalty Points
Second-Level Supervisor	10,000 Volume Points	=	5% = 500 Royalty Points
Third-Level Supervisor	10,000 Volume Points	=	5% = 500 Royalty Points

1 a Distributor purchases each Volume Month must be sold or consumed that
2 month.” A copy of the Earnings Certificate form is found on page 48 of Exhibit C.

3 126. Herbalife Supervisors must requalify annually by paying the Annual
4 Processing Fee and by meeting similar volume requirements as the original
5 qualification requirements.

6 127. In Herbalife’s 10-Ks, Herbalife reported that for the years 2012,
7 2011, 2010, and 2009, its Sales Leader retention rate was approximately 51.10%,
8 48.6%, 43.3%, and 42.2%, respectively.

9 **World Team (SL)**

10 128. Herbalife promotes Supervisors to the World Team if they meet one
11 of the three following requirements. They achieve 10,000 Total Volume Points in
12 one month after becoming a Qualifying or a Fully-Qualified Supervisor. Or if they
13 achieve 2,500 Total Volume Points each month for four consecutive months. Or if
14 they are awarded 500 Royalty Override Points in one month. World Team
15 members get special planning and training sessions targeted to accelerate their
16 progress to TAB Team membership and all the benefits of being a Supervisor.

17 129. According to Herbalife’s 2012 Statement, World Team members’
18 average annual earnings are \$6,224 and the median compensation is \$5,659 in
19 payments from Herbalife.

20 **TAB Team (SL)**

21 130. Supervisors are eligible to become members of the “Top Achievers
22 Business Team” (“**TAB Team**”), which includes three steps: Global Expansion
23 Team (“**GET**”), Millionaire Team, and President’s Team.

24 131. TAB team members are eligible for Production Bonuses. The TAB
25 Team Production Bonus is a bonus on the downline Organizational Volume (the
26 volume on which a Supervisor is paid a Royalty Override).

GET Team (SL)

132. Herbalife promotes a Supervisor to the GET Team if that Supervisor accrues 1,000 Royalty Override Points each month for three consecutive months.

133. As a GET Team member, the distributor gets all the benefits of a Supervisor and can earn TAB Team Production Bonuses based on the qualification level, can qualify for vacation and training events and can participate in special advanced trainings and conference calls.

134. A GET Team member can qualify for a monthly 2% TAB Team bonus payment of the downline Organizational Volume, which Herbalife describes as a partial reward for the team member's "undivided loyalty" to the company.

135. According to Herbalife's 2012 Statement, GET Team members have an average annual earnings of \$22,766 and median compensation of \$19,417 in payments from Herbalife.

Millionaire Team (SL)

136. If a Supervisor achieves 4,000 Royalty Override Points each month for three consecutive months, Herbalife promotes that Supervisor to the Millionaire Team the following month and, after a waiting period of two months, that Millionaire Team member can earn a 2-4% monthly TAB Team bonus off the downline's Organizational Volume. Millionaire Team members also get all the benefits of being a Supervisor.

137. According to Herbalife's 2012 Statement, Millionaire Team members earn an average of \$100,195 and median of \$97,303 in payments from Herbalife.

President's Team (SL)

138. Herbalife promotes a Supervisor who accrues 10,000 Royalty Override Points in three consecutive months to the President's Team where, after a waiting period of three months the President's Team member can earn a 2%-6% Production Bonus.

1 139. To qualify for the President's Team, a Supervisor must accrue 20,000
2 to 50,000 Royalty Override Points in three months. The TAB Team bonuses range
3 from 2% to 7%, depending on the number of Royalty Override Points the
4 Supervisor accrues.

5 140. For all TAB Team members, the Production Bonus decreases from
6 the maximum percentage depending on whether there are other TAB Team
7 members in the Tab Team member's downline earning Production Bonuses on the
8 volume.

9 141. According to Herbalife's 2012 Statement, President's Team members
10 (which include the Chairman's Club and Founder's Circle Members) earn an
11 average of \$514,638 and median of \$336,901 in payments from Herbalife.

12 **Chairman's Club (SL)**

13 142. Herbalife promotes a distributor to the Chairman's Club if the
14 distributor has five Fully-Qualified President's Team members in five separate
15 lines of the distributor's downline organization.

16 143. Chairman's Club Members are eligible for a percentage of
17 Herbalife's global sales. This bonus is the "Mark Hughes Bonus Award."

18 144. The Mark Hughes Bonus Award is a bonus pool representing a 1% of
19 Herbalife's *worldwide* product sales (calculated using SRP). Herbalife distributes
20 this bonus annually among the Chairman's Club and Founder's Circle Members.
21 A copy of the 2010 Mark Hughes Bonus Award Qualifications and Rules is
22 attached as **Exhibit J**.

23 145. The rules to qualify for a Mark Hughes Bonus are incredibly
24 complex. They largely depend on a distributor having President's Team Members
25 within their downline who meet certain production requirements, the Royalty
26 Override Points that Herbalife awards the distributor, and their overall
27 organization production. Notably, there are no rules requiring additional retail
28 sales beyond the "10-Retail Customer Rule" and "70% Rule."

1 146. Herbalife can also exercise discretion in awarding the MH Bonus.
2 Chairman's Club and Founder's Circle members are encouraged to
3 Demonstrate leadership and Herbalife spirit. ...Support, promotion and
4 participation in Herbalife efforts, including Company meetings and other
5 efforts such as conference calls, Herbalife Broadband Network (HBN),
6 audio/visual recordings, promotions, marketing and sales, projects,
7 suggestions and working with the Company as it develops strategic plans
8 and leads the effort to enhance the Company's overall business...
9 Attendance of the Distributorship at major events.

10 147. Plaintiffs are informed based on information found at
11 <http://www.herbalife.com/chairmansclub> <visited April 4, 2013> and believe
12 there were only forty-three Chairman's Club members, worldwide, as of April 4,
13 2013.

14 **Founders Circle (SL)**

15 148. The pinnacle of the Herbalife endless chain is the Founder's Circle.

16 149. Herbalife promotes a distributor to the Founder's Circle if the
17 distributor has ten first-line, Fully-Qualified President's Team members in ten
18 separate lines of that distributor's downline organization.

19 150. Founder's Circle members are also eligible for the "Mark Hughes
20 Bonus Award."

21 151. Plaintiffs are informed based on information found at
22 <http://www.herbalife.com/chairmansclub> that as of April 4, 2013, there are only
23 eight Founder's Circle members, worldwide.

24 **THE ILLEGAL SCHEME**

25 152. Herbalife's compensation structure rewards recruiting of new
26 participants over retail sales and leads to abuses.

27 153. These abuses include: (1) Herbalife and Beneficiaries and Promoters
28 making outlandish statements about potential earnings and the business

1 opportunity for potential and actual distributors; (2) distributors focusing on
2 recruiting new distributors rather than on making retail sales of products; (3)
3 distributors purchasing more products than they can feasibly sell to actual retail
4 customers to meet volume requirements (a practice known as “inventory
5 loading”); (4) Herbalife and Beneficiaries and Promoters encouraging other
6 distributors to make “one-time” purchases to jump up the chain to higher levels
7 (“pay determines position” and “position determines pay”); and (5) Herbalife and
8 Beneficiaries and Promoters encouraging their downline distributors to recruit
9 other distributors so they can use those distributors’ purchases to move higher up
10 the chain and get the Royalty Overrides, bonuses, and other incentives.

11 154. Herbalife Ltd.’s 2011 and 2012 10-Ks describes this compensation
12 structure as necessary to keep “its most active and productive distributors” – the
13 Beneficiaries and Promoters:

14 Once a distributor becomes a sales leader, he or she has the
15 opportunity to qualify by earning specified amounts of royalty
16 overrides for the Global Expansion Team, the Millionaire Team or the
17 President’s Team, and thereby receives production bonuses of up to
18 7%. We believe that the opportunity for distributors to earn royalty
19 overrides and production bonuses contributes significantly to our
20 ability to retain our most active and productive distributors.

21 155. In its 2011 10-K, Herbalife Ltd. admits its business depends upon its
22 success in recruiting and retaining distributors:

23 Our ability to remain competitive depends, in significant part, on our
24 success in recruiting and retaining distributors through an attractive
25 compensation plan and other incentives. We believe that our
26 production bonus program, international sponsorship program and
27 other compensation and incentive programs provide our distributors
28 with significant earning potential.

1 In its 2012 10-K, Herbalife changed that to mention its products: “Our ability to
2 remain competitive depends on having relevant products that meet consumer
3 needs, a rewarding compensation plan, and a financially viable company.”

4 156. With the 2004 and 2005 disclosures by Herbalife regarding its NSL
5 turnover of 90% (who make up 83% of its total distributors) and disclosures that
6 of the remaining 17% who are Supervisors and above, 43%-51% of its
7 Supervisors do not requalify, historically, most Herbalife distributors will fail.

8 157. As illustrated best by Exhibit B, Herbalife’s 2012 Statement the
9 Herbalife endless chain scheme makes money for those few at the top– the
10 Beneficiaries and Promoters – and those are the distributors Herbalife tries to
11 retain to remain competitive in the industry – and disappoints the many at the
12 bottom who cannot make retail profits and who give up on the Herbalife “business
13 opportunity” in droves.

14 **Herbalife’s Inducement of New Recruits**

15 158. Herbalife induces new recruits to join the Herbalife program through
16 material false representations that such recruits can re-sell Herbalife products for
17 retail profit and can move up the endless chain and earn commissions, bonuses,
18 and other incentives because of their recruiting activities.

19 159. Besides representations made in the IBP or mini-IBP, Herbalife also
20 promotes the scheme using distributor testimonials. In testimonials Herbalife
21 published on its website, Herbalife tells recruits and distributors:

- 22 a. Natalie and Justin M. say that “‘Now we control our destiny.’ ... ‘We
23 researched different business opportunities,’ ... ‘But Herbalife offered
24 the chance to work from home, coupled with solid earning
25 potential.’”
- 26 b. Scotty M. says that “‘After just two years working the business, I was
27 able to quit my job and become a full-time Distributor.’ ‘I wanted to
28 be my own boss.’ ... ‘I’ve been able to upgrade to a bigger home and

1 nicer car.”

2 c. Wendy W. says “‘I’m the owner of an International business!’ ... ‘If
3 you have little or no business experience, don’t worry; determination
4 can go a long way!’”

5 These statements taken from Herbalife’s website are attached as **Exhibit K**.

6 160. In Herbalife’s IBP and Mini-IBP, Herbalife includes a magazine
7 called *Live the Good Life! HERBALIFE* (**Exhibit F** (excerpts)). There, with
8 images of currency, luxury vehicles, boats, and expensive homes, Herbalife tells
9 recruits that it is a “part-time opportunity,” “[a] full-time Opportunity,” and “[t]he
10 opportunity to earn more than you ever thought possible and make your dreams
11 come true!” Recruits are also told this is “[a] business opportunity for everyone
12 that’s fun, simple and magical!” and that all they need to do is: use the products,
13 wear the button, and talk to people – “Use, Wear, Talk.”

14 161. In *Live the Good Life! Herbalife*, Herbalife provides the following
15 example of potential ways that new recruits can earn income.
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17
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19
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Earn an income several different ways



Direct Sales

- As a Distributor \$25 of every \$100 **25%**
- As a Success Builder \$42 of every \$100 **42%**
- As a Supervisor \$50 of every \$100 **50%**

Downline organization

- Commission checks
- Royalty checks
- Bonus checks

Plus:

- Recognition
- Promotions
- Training

How to earn even more income

Example 1

You = Supervisor (2,500 Volume Points)

You recruit & retain 2 supervisors

- 2 Supervisors each produce 2,500 Organizational Volume Points
- = 5,000 Volume Points R.O. = \$250/month

They each recruit & retain 2 Supervisors

- 4 Supervisors each produce 2,500 Organizational Volume Points
- = 10,000 Volume Points R.O. = \$500/month

They each recruit & retain 2 Supervisors

- 8 Supervisors each produce 2,500 Organizational Volume Points
- = 20,000 Volume Points R.O. = \$1,000/month

Total of 35,000 Volume Points, Your R.O. = \$1,750 Plus Production Bonus of 2% = \$700

Total of Checks \$2,450/mo.

Example 2

You = Supervisor (2,500 Volume Points)

You recruit & retain 3 supervisors

- 3 Supervisors each produce 2,500 Organizational Volume Points
- = 7,500 Volume Points R.O. = \$375/month

They each recruit & retain 3 Supervisors

- 9 Supervisors each produce 2,500 Organizational Volume Points
- = 22,500 Volume Points R.O. = \$1,125/month

They each recruit & retain 3 Supervisors

- 27 Supervisors each produce 2,500 Organizational Volume Points
- = 67,500 Volume Points R.O. = \$3,375/month

Total of 97,500 Volume Points, Your R.O. = \$4,875 Plus Production Bonus of 4% = \$3,900

Total of Checks \$8,775/mo.

Imagine...4 or 5!

*The incomes presented are applicable to the individuals depicted and are not a guarantee of your income, nor are they typical. For the Statement of Average-Gross Compensation for U.S. Supervisors, go to www.Herbalife.com or www.MyHerbalife.com.

41

1 162. Based on Herbalife's 2012 Statement, a distributor receiving checks
2 of \$2,450 a month or \$8,775 a month would be at least in the top 0.23% or
3 0.092% of all U.S. distributors, respectively. Prior to Herbalife's 2012 Statement,
4 a prospective or actual distributor had no way to know how atypical Herbalife's
5 examples were.

6 163. Herbalife also distributes a magazine called *Herbalife Today*.
7 *Herbalife Today* follows a format where Herbalife's CEO and President, Michael
8 Johnson, has a letter to distributors, as well as product advertisements, as well as a
9 section called "Success Stories," featuring a President's Circle member, along
10 with other success stories of TAB Team and GET Team members.

11 164. In the *Herbalife Today* magazine, Issue No.156, which Herbalife
12 distributed in 2012 to Plaintiffs and other members of the class, Michael Johnson
13 writes, "[m]illions of people's lives are being improved through our products and
14 our business opportunity." Selected portions of *Herbalife Today*, Issue No. 156
15 are attached as **Exhibit L**. Plaintiffs reviewed *Herbalife Today*.

16 165. For the "Success Story," *Herbalife Today*, Issue No. 156, p.11-12,
17 features a Chairman's Club member, Paulina Riveros. Herbalife tells a tale of
18 Paulina working part-time using "a proven and surprisingly simple approach to
19 breathe life into her organization: using the products, wearing the button, and
20 talking to people." "This is how Paulina began climbing the Marketing Plan and
21 earning amazing income. ... Today she lives in a spacious ranch in Florida, and
22 has a lifestyle that she couldn't have imagined in her wildest dreams."

23 166. *Herbalife Today*, No 156, also features a section called "Where
24 Inspiration Meets Success: At a crossroads in their lives, these Distributors took
25 the high road, and turned their inspiration into success." There, distributors like
26 Deisy T., advises readers:

27 You only have to put in the hard work along with the dedication, patience
28 and discipline, attributes you can learn at the events. Herbalife is a real

1 opportunity for everyone who is willing to focus and work for his or her
2 goals. Plant a seed every day and you will harvest lifetime success.

3 167. *Herbalife Today* is full of “success” stories of distributors. They
4 boast of: their “successful international business that I managed to build from
5 scratch”; leaving high-paying jobs to join the Herbalife business; enjoying “a
6 lifestyle that they always dreamed of”; replacing “two engineering salaries with
7 Herbalife income”; and “making more money than he could have ever imagined.”
8 Herbalife has published similar testimonials in *Herbalife Today* for the last four
9 years.

10 168. Herbalife also has its own official YouTube channel,
11 <http://www.youtube.com/user/HerbalifeIntl>. There, a video entitled “Why
12 Herbalife, Why Now? Building your Business” (uploaded on December 22, 2008
13 and available through April 9, 2013, <<http://www.youtube.com/watch?v=-990eOlwchw>>) demonstrates the Herbalife “pitch.”

15 169. Herbalife’s Chairman and CEO, Michael Johnson, introduces that
16 video, saying “boy do we have a solution to help you in these tough economic
17 times.” Highlighting the economic uncertainty at the time, the video asks “why
18 Herbalife?” To that question, various distributors respond: “it’s recession proof.”
19 “When everybody else is having troubles, listen – we’re flourishing.” “When the
20 economy is bad our business is fueled.” “I got started in a recession -- this is my
21 fourth recession. I’m more excited about today than ever before.” And “This
22 opportunity can be your answer.”

23 170. In that video, Distributors tell viewers that with Herbalife “you get to
24 be your own boss,” “earn extra money,” “work from home,” “raise your own
25 children,” “make your own hours,” “make part-time or full-time money,” “take
26 your family on vacations,” “give your family all the extras that they deserve,”
27 “change your lifestyle to do whatever you want to do.” When asked again, “why
28 Herbalife,” recruits are told “because you can finally earn what you’re worth.”

1 171. The video ends with the Herbalife's Chairman and CEO exclaiming,
2 "So why are you waiting. Come on -- at Herbalife we've got the answer to these
3 tough economic times. Contact the person who sent you this video and start
4 improving your life right now. Become an Herbalife independent distributor
5 today."

6 172. Herbalife features the Beneficiaries and Promoters on its website
7 www.herbalife.com/chairmansclub (visited April 8, 2013) and at
8 www.video.herbalife.com. There, many of the Beneficiaries and Promoters have
9 videos detailing their expensive lifestyles, lavish homes, luxury cars, and their
10 "rags-to-riches" stories, all purportedly made possible through Herbalife.

11 173. Herbalife also prominently features the Beneficiaries and Promoters
12 in literature, flyers, and public events.

13 174. Herbalife sponsors what it calls an "Herbalife Extravaganza." The
14 Herbalife Extravaganza is annual convention that Herbalife promotes in *Herbalife*
15 *Today*, online and through emails. At the Extravaganza, Herbalife distributors
16 come from around the country for sales and marketing advice and tips from
17 Beneficiaries and Promoters.

18 175. In one video taken from the Herbalife 2010 Extravaganza in Los
19 Angeles, California, Beneficiary and Promoter Geri Cvitanovich, in minutes 1:40-
20 3:00, tells a convention hall filled with distributors that the Herbalife plan "is a
21 confidence plan ... to take you from where you are to wherever you want to go,"
22 grooming them to become multimillionaires:

23 all of us are getting groomed to become multi-millionaires. That is an
24 awesome opportunity. Now you can take advantage of it. Or you only
25 want to make \$60,000, \$100,000, couple \$100,000. But the fact that
26 we are all here getting groomed to become millionaires in today's
27 marketplace to me is an awesome privilege to be a part of. And I just
28 want those of you who are new to know that you are in the right place

1 at the right time. The fastest amount of growth in the shortest amount
2 of time in our history. And we are doing nothing but going up.
3 That video can be found at <http://www.youtube.com/watch?v=PmeLJHHKoDk>
4 (visited April 8, 2013).

5 176. In another video taken at the Herbalife 2011 Extravaganza in Las
6 Vegas found at <http://www.youtube.com/watch?v=cVbd8bw4MIQ> (visited April 8,
7 2013) Beneficiary and Promoter Susan Peterson tells attendees, at minutes 1:03-
8 1:58 that, if they are not getting rich in Herbalife, “it’s wrong” and that they are
9 taking things for granted:

10 A lot of us, we built our organizations not when it was easy but when
11 it was hard. When it was terrible. When it was tough. And to make a
12 fortune in the tough times is really something. But to make it in the
13 easy times you would think everyone would do it and to not do [it] is
14 just to me wrong. I mean if you are not getting rich today in Herbalife,
15 I’m going to be honest, it’s wrong. It’s really wrong. It means you’re
16 taking things for granted.

17 Peterson instructs attendees at minutes 3:00-5:42 that to increase their royalty
18 checks, they should focus on recruiting people looking for opportunity:

19 If you want to recruit somebody who loves the products and who
20 wants to be your discounted customer because they love the products
21 ... I would say keep doing that and it’s wonderful. But you can’t
22 count that in business-building recruiting. If you want to move the
23 check, you need to find other people that want to make money and
24 represent the Herbalife products and Herbalife opportunity. People
25 that are like you that want to be distributors....find those people that
26 are looking for opportunity. That want to change their family’s lives
27 and their financial situation. [Those are the] people you need to work
28 with. [Those are] the people you need to find. And believe me, there

1 has never been an easier time to find people like that, okay, because
2 our economy is bad in America. But at the same time our opportunity
3 has never been stronger. Our brand, our product, our company, our
4 direction. And if you aren't going after this, shame on you. Because
5 you're going to miss the greatest time-period to literally go here
6 [gestures with her hand down] to here [gestures with her hand up]
7 with your royalty check. It doesn't happen often. It has happened two
8 times in my Herbalife career. This is number three. This is the time to
9 work. This is the time to recruit. This is the time to build a new
10 organization. This is the time. There has never been a time this easy.
11 You've gotta go for this.

12 177. In a video profile of Beneficiary and Promoter Doran Andre found at
13 <http://www.youtube.com/watch?v=2dYK605bAaU> (visited April 8, 2013) Andre
14 tells about how, at minutes 1:08-2:00, he went from working for a company at 22
15 building his own Herbalife distributorship:

16 There [were] people in the company that wanted to mentor us. There
17 was a support system, an infrastructure, a business model that all we
18 needed to do is execute. And then before you know it, in four months
19 working the same amount of hours, two to three hours a week, [our]
20 income hit \$1,500 a month...and in 90 days our income hit \$10,000 a
21 month. And our very first calendar year our income hit \$350,000. And
22 our second year... our income hit a million one.

23 Andre goes on to remark, after a tour of his luxury home and images of his red
24 Ferrari, at minutes 4:00-4:15:

25 You know it's really amazing. I step out of the Ferrari or Bentley or
26 whatever and people go 'what does that guy do for a living?' and I
27 go I'm an Herbalife independent distributor. And people are
28

1 absolutely amazed at that that's what I do. It's an incredible quality
2 of life.

3 Andre also operates what he calls the "Financial Success System." In a video
4 found at <http://vimeo.com/20317153> (visited April 8, 2013) promoting his system,
5 he shows his \$30,000,000 home, luxury cars and motorcycle and tells his audience:
6 "the big money hasn't even been made in Herbalife.... The biggest money in the
7 shortest period of time is going to be in the next 3-5 years."

8 178. These types of grand overstatements regarding distributors' potential
9 earnings and opportunities are part of a pattern and practice throughout the
10 Herbalife endless chain. One Herbalife distributor's website,
11 <http://www.cwgteam.com/>, (visited April 8, 2013) promises that:

12 how far you take your Herbalife business and the income you require
13 or desire is your decision. However, you may be interested in the
14 following statistics:

- 15 ○ Lottery Win: 1 in 13 million chance of becoming a millionaire
- 16 ○ Herbalife Distributor: 1 in 26,000 chance of becoming a
17 millionaire
- 18 ○ Herbalife Supervisor: 1 in 2,600 chance of becoming a
19 millionaire
- 20 ○ Herbalife World Team member: 1 in 800 chance of becoming a
21 millionaire
- 22 ○ Herbalife Global Expansion Team member: 1 in 80 chance of
23 becoming a millionaire
- 24 ○ Herbalife Millionaire Team member: 1 in 8 chance of becoming
25 a millionaire
- 26 ○ Herbalife President's Team member: becoming a millionaire is
27 a certainty

Herbalife's Deception Regarding Potential Earnings

179. When making statements regarding their wealth and the potential wealth for new recruits, Herbalife and the Beneficiaries and Promoters routinely refer the readers or viewers (with an asterisk and a footnote) to the Herbalife "Statement of Average Gross Compensation of U.S. Supervisors." They disclaim, "Incomes applicable to the individual (or example) depicted and not average. For average financial performance data, see the Statement of Average Gross Compensation of U.S. Supervisors at Herbalife.com and MyHerbalife.com."

180. At a meeting with Wall Street analysts in 2007, Herbalife's Chairman and CEO Michael Johnson characterized these Statements of Average Gross Compensation as "transparent" to distributors:

We are transparent with our earnings potential among supervisors.

The staff [*sic.*] on this page which is the average gross compensation of U.S. supervisors is a public document, it is available on our website and is part of our introductory business pack that all new distributors receive. So, every new distributor in this Company knows exactly where they stand and what their opportunity is inside the Company.

181. As Johnson explains, throughout 2009-to the present, Herbalife distributed its "Statements of Average Gross Compensation of U.S. Supervisors," to all of its U.S. distributors both in Book 4, the Sales and Marketing Plan, as well as on the internet.

182. At the bottom of each of its disclosures made from 2009-February 2013 (Exhibit A) Herbalife tells its distributors: "The figures stated above are not a guarantee nor are they a projection of a typical Distributor's earnings or profits. Like any other independent business, the achievement or failure of a Distributor depends upon his or her skill set, commitment and desire to succeed. At Herbalife, the opportunity to earn more is always available to each and every Distributor."

183. From at least 2009 through February 2013, however, Herbalife cherry-picked the data set that they used to create their 2008-2011 Statements. They only reported the incomes of “Supervisors” and above, and further limited that data set to “Active Leaders” – those who “generated at least 2,500 points of volume in” in the year “after becoming Supervisor.”

184. According to their 2011 Statement, “Active Leaders” only make up 39.4% of Herbalife’s “Leaders.” Thus, not only did Herbalife fail to disclose any earnings as to majority of distributors who were NSLs, Herbalife failed to disclose the earnings of 60.6% of SLs in their statements distributed in 2012. See Exhibit A. A portion is below:

**STATEMENT OF AVERAGE GROSS
COMPENSATION OF U.S. SUPERVISORS**

Herbalife offers its Distributors an opportunity to achieve a lifetime of better health through its scientifically advanced weight-management and nutrition products. While many of our Distributors join the Herbalife family simply to enjoy our life-changing products, others want to share their results and take advantage of the many income benefits our business opportunity provides. With Herbalife, you can work part time and earn a supplemental income, or focus solely on your Herbalife Distributorship and increase your financial potential. It’s completely up to the individual how much he or she wants to achieve! A Distributor earns profits by buying Herbalife products at wholesale and reselling them at retail. If the Distributor wants to increase his or her involvement in the business and enjoy the possibility of higher levels of income, he or she may sponsor others into the business and develop an organization.

Over 25% of Distributors reach the rank of Supervisor and above (“Leader”), qualifying them for additional compensation, which is paid by Herbalife based upon the sales production of those they have sponsored directly and indirectly. The annual gross compensation paid by Herbalife to all Leaders during 2011 averaged \$2,900. Over 39% of Supervisors are “Active” (defined as those who generated at least 2,500 points of volume in 2011 after becoming Supervisor). The annual gross compensation paid by Herbalife to Active Leaders during 2011 averaged approximately \$7,300.

ACTIVE LEADERS			
Earning Level	% of Total Leaders	% of Active Leaders	Average Earnings (USD)
President’s Team	0.2%	0.6%	\$ 515,689
Millionaire Team	0.7%	1.7%	\$ 100,195
GET	2.6%	6.5%	\$ 22,766
World Team	2.9%	7.3%	\$ 6,224
Supervisor	33.1%	83.9%	\$ 901
Total	39.4%	100.0%	\$ 7,348

The amounts above do not include the income Distributors can earn from their retail or wholesale income, so the actual compensation can be somewhat higher, depending upon each Distributor’s personal-selling efforts.

The figures stated above are not a guarantee nor are they a projection of a typical Distributor’s earnings or profits. Like any other independent business, the achievement or failure of a Distributor depends upon his or her skill set, commitment and desire to succeed. At Herbalife, the opportunity to earn more is always available to each and every Distributor.

185. In February 2013, Herbalife released an updated and extended disclosure. A full copy is available at Exhibit B. A portion is below:

Single-Level Distributors (No Downline)							
Economic Opportunity	Distributors*		The economic rewards for single-level Distributors are the wholesale pricing received on products for consumption by the Distributor and his or her family as well as the opportunity to retail product to non-Distributors. Neither of these rewards are payments made by the company and therefore are excluded from this schedule				
	Number	%					
<ul style="list-style-type: none">Wholesale price on product purchasesRetail profit on sales to non-Distributors	351,065	71%					
Non-Sales Leaders** With a Downline							
Economic Opportunity	Distributors		In addition to the economic rewards of the single-level Distributors above, which are not included in this chart, certain non-sales leaders with a downline may be eligible for payments from Herbalife on downline product purchases made directly with Herbalife. 2,466 of the 4,449 eligible Distributors earned such payments in 2012. The average total payments to the 2,466 Distributors was \$104.				
	Number	%					
<ul style="list-style-type: none">Wholesale price on product purchasesRetail profit on sales to non-DistributorsWholesale profit on sales to another Distributor	60,333	12%					
Sales Leaders** With a Downline							
Economic Opportunity	Distributors		Average Payments from Herbalife	All Sales Leaders with a Downline			This chart does not include amounts earned by Distributors on their sales of Herbalife products to others
	Number	%		Number of Distributors	% of Total Grouping	Average Gross Payments	
<ul style="list-style-type: none">Wholesale price on product purchasesRetail profit on sales to non-DistributorsWholesale profit on sales to another DistributorMulti-level compensation on downline sales<ul style="list-style-type: none">RoyaltiesBonuses	82,464	17%	>\$250,000	194	0.2%	\$724,030	
			\$100,001-\$250,000	452	0.5%	\$148,808	
			\$50,001-\$100,000	539	0.7%	\$68,912	
			\$25,001-\$50,000	1,136	1.4%	\$35,581	
			\$10,001-\$25,000	1,940	2.4%	\$15,538	
			\$5,001-\$10,000	2,552	3.1%	\$7,008	
			\$1,001-\$5,000	11,307	13.7%	\$2,216	
			\$1-\$1,000	39,151	47.5%	\$292	
			0	25,193	30.6%	\$0	
			Total	82,464	100.0%	\$4,485	

* 30,621 of the 351,065 single-level Distributors are sales leaders without a downline

** Sales leaders are Distributors that achieved the level of Supervisor or higher. See details on Herbalife's marketing plan at www.myherbalife.com.

1 186. Plaintiff is informed and believes based on Herbalife's 2012
2 Statement that Herbalife's representation in its 2008-2011 Statements that "[o]ver
3 25% of Distributors reach the level of Supervisor and above" is false and
4 misleading. The 2012 Statement disclosed that 83% of all of its distributors in
5 2012 were NSLs, leaving only 17% as Supervisors and above in 2013. Including
6 the 30,621 distributors who became Supervisors through their own Personally
7 Purchased Volume, brings the percentage of Supervisors to 22.89% of all
8 distributors.

9 187. Herbalife's 2012 Statement discloses that 71% of all U.S.
10 Distributors – 351,065 distributors – are "Single-Level Distributors" with no
11 downline.

12 188. Herbalife's 2012 Statement discloses that there are only 60,333 NSLs
13 with a downline (Senior Consultants and Qualified Producers). Of that number,
14 only 2,466 of those distributors earned "Wholesale Profits." Even then, the
15 average "wholesale profits" of those 2,466 distributors was \$104 for a total
16 payment of \$256,464 paid to NSLs in 2012 in "Wholesale Profits."

17 189. Herbalife's 2012 Statement also discloses that a "majority of those
18 Distributors who earned in excess of \$100,000 in 2012 had reached the level of
19 Herbalife's President's Team. During 2012, 47 U.S. Distributors joined the level
20 of President's Team. They averaged 9 years as an Herbalife Distributor before
21 reaching President's Team, with the longest being 20 years and the shortest being
22 less than three years."

23 190. Similarly, Herbalife's 2012 Statement discloses that besides the
24 82,464 SLs, there are 30,621 SLs who "paid for their position."

25 191. In its 2012, 2011, 2010, and 2009 10-K disclosures, Herbalife makes
26 at least some disclosure to investors and potential investors that it retains 51.1%,
27 48.6%, 43.3%, and 42.2% of its Sales Leaders; until the 2012 Statement;
28 Herbalife, however, failed to disclose this same fact to distributors and potential

1 distributors. Finally, in the 2012 Statement Herbalife provided distributors the
2 same information that it thinks is important for investors: “51.0% of all sales
3 leaders as of February 1st, 2011, requalified by February 1st, 2012 (including 33%
4 of first time sales leaders).”

5 192. All of the information not disclosed in the 2008-2011 Statements are
6 relevant for: recruits deciding if Herbalife really is the “answer to these tough
7 economic times”; recruits deciding to become Herbalife distributors; distributors
8 deciding to purchase Herbalife product; distributors reading glowing profiles on
9 *Herbalife Today*; distributors evaluating their chances of earning “Wholesale
10 profits,” distributors deciding whether to purchase product to “pay for position”;
11 distributors deciding whether to recruit other distributors; and distributors
12 evaluating Founder’s Circle members telling them they are “groomed to become
13 multi-millionaires” and that if they are not “getting rich today in Herbalife...It’s
14 really wrong.”

15 **Herbalife’s Recruiting Rewards Price-Out Products**

16 193. Because Herbalife sends such a large percentage of every dollar
17 received by it upline as Wholesale Profits, Royalty Overrides, bonuses, and
18 incentives – \$0.46 to \$0.64 of every dollar paid it for product – Herbalife sets the
19 SRP at an inflated price well over what Herbalife’s products sell at in the open
20 marketplace.

21 194. While Herbalife’s “competitive compensation structure” supposedly
22 pays out up to 73% of product revenues to distributors in “Retail and Wholesale
23 Profits, Royalty and bonus income and incentives,” it falls on the Herbalife
24 distributor retailing the product to recoup this 73%.

25 195. This inflated markup necessary for the “competitive compensation
26 structure” makes Herbalife’s products uncompetitive for retail sale at SRP.
27
28

Overcharges on Packaging and Handling

196. On top of this inflated SRP, Herbalife charged a 7% “packaging and handling” fee based on the SRP for products ordered directly from Herbalife. A distributor must add that 7% fee to the SRP to recoup their costs and earn the promised retail profits.

197. Besides this 7% surcharge, Herbalife charged its distributors from 2.5% to 4% of the SRP if they had products shipped to them instead of picking the products up at an Herbalife distribution center (there are only six centers in the U.S.). For a distributor to earn the promised profit on a retail sale, the distributor would need to resell the product at 109.5% to 111% of SRP.

198. Based on Herbalife’s 2008-2011 10-Ks, Herbalife’s average revenue for North America for “packaging and handling” and shipping is 10.33%, 10.50%, 10.59, and 10.7% of its total “Retail Sales” (which it uses the SRP to calculate).

199. In an April 21, 2011 letter to the SEC, Herbalife states “[t]he shipping and handlings costs for 2010, 2009, and 2008 were \$58 million, \$49 million and \$48 million, respectively.” Herbalife’s 2010 and 2009 10-Ks, however, account for Herbalife’s revenues for North America (which includes Canada, Jamaica, and Aruba) from shipping and handling for 2010, 2009, and 2008 as \$102.70 million, \$87.30 million, and \$80.8 million, respectively.

200. Plaintiff is informed and believes based on the discrepancy between these reported numbers that Herbalife overcharged members of the class in 2009 and 2010 by millions of dollars for packaging, shipping, and handling. Because Herbalife has not changed its formula to calculate the “Packaging and Handling” and shipping costs since 2009, Plaintiff is informed and believes that Herbalife has similarly overcharged and profited from Plaintiffs and the class from their supposed “Packaging and Handling” and “Shipping” fees during 2011, 2012, and 2013.

1 201. Plaintiff is further informed and believes that Herbalife uses this
2 surcharge on top of the SRP as a way to avoid having to pay \$0.46 to \$0.64 of the
3 actual revenue it receives from purchases upline. By using a surcharge, Herbalife
4 can increase its profit margin without dramatically raising the SRP on its products
5 (and without having to share those price increases with the Beneficiaries and
6 Promoters).

7 202. Because of the inflated SRP and the packaging, handling, and
8 shipping fees, the prices distributors pay for Herbalife's products are so high that
9 the profit Herbalife promises on retail sales at the Distributor level is almost
10 impossible.

11 203. While there is a retail component to the Herbalife endless chain, the
12 inflated SRP of the products and inflated shipping and handling fees make it
13 unlikely that Herbalife distributors have meaningful opportunities to have retail
14 sales. As Herbalife pays out "Wholesale Profits," royalties, bonuses, and other
15 incentives regardless of whether the downline distributor sells the product at SRP
16 there is a systematic incentive to recruit other distributors.

17 204. Herbalife's system of graduated discounts depending on position
18 exacerbates this problem. Distributors who purchase Herbalife products at a 25%,
19 35%, or 42% discount must compete on price with other distributors higher up the
20 endless chain who can purchase products at greater discount and sell those same
21 products at or around cost.

22 205. Based on Plaintiffs' experience in selling Herbalife products and
23 competing in the marketplace, they are informed and believe that Herbalife's
24 distributors routinely discount Herbalife products on EBay, Craigslist, and on
25 various websites from the SRP, and there is little opportunity for retail profits.

26 206. Because the distributors are Herbalife's actual customers and
27 consumers of its products and those actual customers and consumers are
28 overpaying \$0.46 to \$0.64 on the dollar for product, those distributors drop out at

1 overwhelming numbers, and Herbalife requires an ever expanding network of so-
2 called distributors.

3 **Herbalife's Sales and Marketing Plan Does Not Have or Follow**
4 **Safeguards**

5 207. In *In re Amway Corp.*, 93 F.T.C. 618 (1979) (“Amway”) the FTC
6 recognized four rules that may help a direct marketer avoid the characteristics of
7 an FTC Act violation: the initial investment rule, the 70% rule, the buyback rule,
8 and the 10 customer rule.

9 208. Under the FTC Act, these rules are designed to deter inventory
10 loading and encourage retail sales. In *Omnitrition*, the Ninth Circuit explained that
11 where “a distribution program appears to meet the *Koscot* definition of a pyramid
12 scheme, there must be evidence that the program’s safeguards are enforced and
13 actually serve to deter inventory loading and encourage retail sales.” *Omnitrition*,
14 79 F.3d 776 (1996).

15 209. Because Plaintiffs bring their claims under Section 327 of the
16 California Penal Code and not Section 5 of the FTC Act, these rules do not provide
17 a defense to alleged violations of Section 327. *See Omnitrition*, 79 F.3d 776, 787.
18 And even if the *Amway* rules were relevant, Herbalife does not follow or
19 adequately enforce them.

20 210. **The Initial Investment Rule.** The FTC decision noted that illegal
21 schemes require a payment or initial disbursement by a new participant for the
22 right to sell products and the right to earn rewards, in return for recruiting other
23 participants into the program and which are unrelated to sale of product to the
24 ultimate user.

25 211. Herbalife requires each new Herbalife distributor to purchase an IBP
26 or mini-IBP at a cost of \$95.55 or \$57.75, respectively.

27 212. Because Herbalife increases its discount off the SRP on a graduated
28 basis for Distributors, Senior Consultants, Success Builders, Qualified Producers,

1 and Supervisors, however, Herbalife requires an initial investment well beyond the
2 price of the IBP if a distributor wants to compete in the marketplace for retail
3 consumers of Herbalife products or move up the Herbalife endless chain to a place
4 where they can earn commissions, Royalty Overrides, bonuses, and incentives.

5 213. Following the mantra of “pay for your position” and “position
6 determines the pay,” Herbalife and Beneficiaries and Promoters pressure
7 distributors to make a significant investment to “buy their discount” and get the
8 “highest discount for the least expenditure.”

9 214. In the IBC, Booklet 3, Building Your Business (Exhibit H)
10 Herbalife encourages its distributors on page 18 to invest in product inventory for
11 customer orders:

12 Here are some areas you may want to consider putting money
13 towards:

- 14 ● Product Inventory for customer orders
- 15 ● Personal product inventory
- 16 ● Advertising for your business
- 17 ● Training events/seminars
- 18 ● Business costs, such as office supplies
- 19 ● And, most of all, yourself!”

20 215. In explaining why it is important to build an investment inventory,
21 Herbalife tells distributors on page 19 of Exhibit H:

- 22 ● You can’t sell what you don’t have. Carry enough inventory on
23 hand to cover all your local sales ...
- 24 ● Many people purchase product on the spot. Carry enough product
25 on hand to accommodate spur-of-the-moment sales. You don’t want
26 to make a paying customer wait ...
- 27 ● If you are doing a one-on-one presentation, don’t make the
28 customer wait for product...”

1 216. **The “70%” Rule:** The 70% rule is as follows: “[t]o ensure that
2 distributors do not attempt to secure the performance bonus solely on the basis of
3 purchases, Amway requires that, to receive a performance bonus, distributors
4 must resell at least 70% of the products they have purchased each month....
5 Amway enforces the 70% rule.” *Amway*, 93 F.T.C. 618, 646, ¶73.

6 217. Herbalife’s 70% rule, found at page 71 of Exhibit C is:
7 In order to qualify for and receive Royalty Overrides, Production
8 Bonuses, and other bonuses paid by Herbalife, at least 70% of the
9 total value of Herbalife products a Distributor purchases each
10 Volume Month must be sold or consumed that month. For the
11 purpose of fulfilling the certification requirements of this Rule, a
12 Distributor may count any or all of the following:

- 13 • Sales to retail customers;
- 14 • Sales at wholesale to downline Distributors;
- 15 • Product used for personal or family consumption; and
- 16 • *Product consumed at Nutrition Clubs.

17 If the Distributor fails to timely certify to Herbalife that they
18 have sold or consumed 70% of the product purchases made that
19 Volume Month, Royalty Overrides, Production Bonuses, and other
20 bonuses will not be paid to the Distributor.

21 *If a Distributor utilizes Nutrition Club sampling activity
22 towards compliance, the Distributor shall maintain a log of member
23 visits for at least two years, setting forth the name of the member,
24 dates of visits, and contact information, and shall make those records
25 available for verification purposes if requested by the Company.

26 218. Herbalife’s 70% Rule does not require that Herbalife’s distributors
27 resell at least 70% of the Herbalife products to resale customers because it allows
28 “[p]roduct used for personal or family consumption” to satisfy the rule. Self-

1 consumption does not count as a retail sale for purposes of the 70% Rule. *See*
2 *Omnitrition*, 79 F.3d 776, 783 citing *Koscot*, 86 F.T.C. 1106,1181.

3 219. Herbalife does not require a Supervisor to make *any* retail sales as
4 the rule allows “[s]ales at wholesale to downline Distributors.” Thus, it does not
5 meet the 70% Rule.

6 220. Moreover, the 70% Rule is not applied to NSL distributors (or
7 Supervisors who do not have a First, Second, or Third Level) even though those
8 distributors can qualify for compensation in promotions up the chain, increased
9 discounts on purchases, and commissions on downline purchases.

10 221. While Herbalife requires Supervisors and above to “certify” that they
11 have complied with the 70% rule, Plaintiff is informed and believes based the
12 Court’s finding of fact in its August 25, 2009 Memorandum & Order Regarding
13 Cross-Motions for Summary Judgment, *Herbalife International of America, Inc. v.*
14 *Ford et al.* Case No. 2:07-CV-2529-GAF-FMO (C.D. Cal.), that “Herbalife does
15 not perform audits to determine compliance with the 70% Rule unless there is an
16 ongoing ‘ethical investigation’ of a Supervisor suspected of violating Herbalife’s
17 policies.” *See Memorandum & Order* (Docket No. 374), 8:16-19. Moreover, even
18 if Herbalife were to perform audits, it does not promote any meaningful change by
19 its distributors who it finds violates its 70% Rule.

20 222. **The Ten Customer Rule:** The “ten customer rule” provides that
21 “distributors may not receive a performance bonus unless they prove a sale to each
22 of ten different retail customers during each month. . . .” *Amway*, 93 F.T.C. 618,
23 646, ¶74.

24 223. Herbalife’s Rule is: Rule 18-B The 10 Retail Customers Rule
25 A Distributor must personally make sales to at least ten (10) separate
26 retail customers in a given Volume Month to qualify for and receive
27 Royalty Overrides, Production Bonuses, and other bonuses paid by
28 Herbalife. For the purpose of fulfilling the certification requirements

1 of this Rule, a Distributor may count any or all of the following each
2 Volume Month.

- 3 • A sale to a retail customer;
- 4 • A sale to a first-line Distributor with up to 200 Personally
5 Purchased Volume Points (and no downline Distributors) may be
6 counted as a sale to one (1) retail customer; and
- 7 • *A Nutrition Club member who consumed products during ten
8 (10) visits to a Nutrition Club within one Volume Month may be
9 counted by the Nutrition Club operator as a sale to one (1) retail
10 customer.

11 If the Distributor fails to timely certify to Herbalife that they have
12 sold to at least ten (10) retail customers in a given Volume Month,
13 Royalty Overrides, Production Bonuses, and other bonuses will not
14 be paid to the Distributor.

15 224. Herbalife's Ten Customer Rule does not mandate sales to customers
16 not already Herbalife distributors. Herbalife allows "[a] sale to a first line
17 Distributor with up to 200 personally purchased Volume Points (and no downline
18 Distributors) which may be counted as a sale to one (1) retail customer," to count
19 to satisfy the Retail Customer Rule.

20 225. Distributors can also satisfy this Herbalife's rule by giving away free
21 samples of Herbalife products at their Nutrition Clubs. This does not constitute an
22 "actual sale" under *Omnitrition* or *Koscot*.

23 226. Herbalife does not apply the Ten Customer Rule to NSL distributors
24 and Supervisors (who do not have a First, Second, or Third Level), even though
25 they can obtain performance bonuses in promotions up the chain, increased
26 discounts on purchases, and commissions on downline purchases.

27 227. Herbalife's 10 Customer Rule and 70% Rule are ineffective in
28 ensuring its distributors focus on retailing the products over recruiting. Because

1 only distributors eligible for Royalty Overrides, bonuses, and other incentives
2 must comply with the rule, to even become a distributor subject to the rules a
3 distributor must recruit heavily and would be in at least the top 10% of all
4 Herbalife distributors.

5 228. **The Buy Back Rule.** The buy back rule requires participants to buy
6 back from any person they recruited any saleable, unsold inventory upon the
7 recruit's leaving Amway. *Amway*, 93 F.T.C. 618, 716. The purpose of the rule is to
8 "reduce or eliminate the possibility of inventory loading by insuring that program
9 participants do not find themselves saddled with thousands of dollars' worth of
10 unsaleable products." *Omnitrition*, 79 F.3d 776, 784.

11 229. Herbalife has a 30-Day Money Back Guarantee for "retail
12 customers." When a retail customer returns product, they return the product to the
13 distributor who sold them the product. That distributor is required, within 30 days
14 of paying the refund to the customer, to send back the unused portion of the
15 product or the containers. Then Herbalife exchanges the returned product with an
16 identical replacement product for the Distributor, regardless of whether that
17 distributor has another customer who wants to purchase the product or products.

18 230. Herbalife has no such "Money Back Guarantee," for a distributor.

19 231. The distributor can return products *purchased from Herbalife* within
20 the prior 12 months on the following conditions:

- 21 a. The distributor must resign as an Herbalife Distributor (and forfeit all
22 of their downline).
23 b. Herbalife reimburses a distributor the SRP of a product less that
24 distributor's discount to purchase the product, less a 10% restocking
25
26
27
28

1 fee.⁷ A distributor does not receive a reimbursement of the 7%
2 packaging and handling fee of the SRP or the shipping fee.

3 c. If the distributor has received Royalty Overrides, that distributor
4 must return all of their records relative to the 70% rule.

5 An “Inventory Repurchase Request Form” is found at page 50 of Exhibit C.

6 232. If a distributor purchases products from distributors in their upline
7 (and not directly from Herbalife) this return policy does not apply. As NSLs can
8 purchase product from their sponsor or their first upline Supervisor, unlike
9 Amway’s rule mandating that participants had to buy back recruit’s product,
10 Herbalife leaves its NSLs at the mercy of their upline to determine whether they
11 will accept the return.

12 233. As Herbalife took a 10% restocking fee from 2009 through August
13 of 2012, Herbalife has not complied with the “buy back rule.”

14 234. As Herbalife does not reimburse the distributor for the inflated
15 packaging and shipping fees, Herbalife has not complied with the “buy back rule.”

16 235. Herbalife knows of, approves, promotes, and facilitates the
17 systematic noncompliance with or breach of, the rules that purportedly protect
18 against the operation of an illegal scheme.

19 **Herbalife is Bound to Operate as an Endless Chain Scheme**

20 236. Herbalife cannot fix itself even if it wants to. In Herbalife’s 2012 10-
21 K, it explains it is contractually bound to continue implementing and operating
22 this endless chain scheme:

23 This agreement with our distributors provides that we will not change
24 certain aspects of our marketing plan without the consent of a specified
25 percentage of our distributors. For example, our agreement with our
26

27 ⁷ Plaintiffs are informed and believe that the 10% restocking fee was discontinued
28 sometime in August of 2012.

distributors provides that we may increase, but not decrease, the discount percentages available to our distributors for the purchase of products or the applicable royalty override percentages, including roll-ups, and production and other bonus percentages available to our distributors at various qualification levels within our distributor hierarchy.

237. As Plaintiffs have not made such an agreement with Herbalife, Plaintiffs are informed and believe that the agreement Herbalife refers to is between Herbalife and Beneficiaries and Promoters and others.

Tolling Applies To Plaintiffs' Claims

238. As explained herein, Herbalife, through its actions and omissions, intended to, and did, conceal from Plaintiffs and other distributors in the class during the relevant period material facts and information relating to Herbalife's endless chain scheme and its deceptive earnings claims. Plaintiffs did not discover, nor had they reason to discover, the information necessary for the causes of action set forth in this Complaint until at least February 7, 2013, when Herbalife disclosed its most recent Statement of Average Gross Compensation, and/or when the original complaint was filed.

239. Herbalife's acts and omissions constitute a "continuing violation" such that any limitations period for Plaintiffs' claims did not begin to accrue until the date of the last wrong or injury that is the subject of this action.

Class Action Allegations

240. Plaintiffs bring this action as a class action under Federal Rule of Civil Procedure 23.

241. Plaintiffs seek to represent a nationwide class defined as follows: "All persons who were Herbalife distributors in the United States from April 2009 until the present."

242. Excluded from the class are the Defendants, their employees, family members, and any distributor who has been a member of the President’s Circle, Founder’s Circle, Chairman’s Club, Millionaire Team, or the GET Team.

243. Subject to confirmation, clarification and/or modification based on discovery to be conducted in this action, Plaintiffs seek to represent a **subclass** of individuals who signed up to Herbalife under a pre-February 2013 Statement of Average Gross Compensation (“**Pre-February 2013 Statement of Average Gross Compensation Subclass**”) “All persons who were Herbalife distributors in the United States from April 2009 to February 6, 2013 and who received a pre-February 2013 Statement of Average Gross Compensation in their IBP or mini-IBP.”

244. Subject to confirmation, clarification and/or modification based on discovery to be conducted in this action, Plaintiffs seek to represent a subclass of individuals who paid “Packaging and Handling” and/or Shipping charges (the “**Packaging & Handling and FedEx Freight Subclass**”) defined as follows: “All persons who were Herbalife distributors in the United States from April 2009 to April 14, 2013 and who paid ‘Packaging and Handling’ and Shipping charges before April 14, 2013.”

245. Plaintiffs seek relief for themselves and all members of the class who agreed to a choice of law of California under California’s Unfair and Deceptive Practices Acts, and California’s Fraudulent Advertising Act.

246. Plaintiffs seek to pursue a private attorney general action for injunctive relief for themselves and all members of the class who agreed to a choice of law of California, and they satisfy the standing and class action requirements.

247. While the exact number of members in the Class and Subclasses are unknown to Plaintiffs at this time and can only be determined by appropriate discovery, membership in the class and subclasses is ascertainable based upon the

1 records maintained by Defendant. It is estimated that the members of the Class are
2 greater than 400,000 and each subclass easily number in the hundreds of thousands.
3 Therefore, the Class and Subclasses are so numerous that individual joinder of all
4 Class and Subclass members is impracticable under Fed. R. Civ. P. 23(a)(1).

5 248. There are questions of law and/or fact common to the class and
6 subclasses, including but not limited to:

- 7 a. Whether Herbalife is operating an endless chain;
- 8 b. Whether distributors paid money to Herbalife for (1) the right to sell
9 a product and (2) the right to receive, in return for recruiting others,
10 rewards which were unrelated to the sale of the product to retail
11 consumers;
- 12 c. Whether *Amway*'s four rules apply to Section 327 claims;
- 13 d. If the *Amway* rules do apply, are Herbalife's *Amway* rules effective;
- 14 e. If the *Amway* rules do apply, and Herbalife's *Amway* rules are
15 effective, did Herbalife enforce those rules;
- 16 f. Whether Herbalife or the Beneficiaries and Promoters omitted to
17 inform Bostick and the plaintiff class that they were entering into an
18 illegal scheme where an overwhelming number of participants lose
19 money;
- 20 g. Whether Herbalife's Statements of Average Gross Compensation
21 distributed from 2009 through 2012 were deceptive and misleading;
- 22 h. Whether Herbalife overcharged for Packaging and Handling;
- 23 i. Whether Herbalife overcharged for shipping;
- 24 j. Whether Herbalife's conduct constitutes an unlawful, unfair and/or
25 deceptive trade practice under California state law
- 26 k. Whether Herbalife's conduct constitutes unfair competition under
27 California state law; and
28

3 249. These and other questions of law and/or fact are common to the class
4 and subclasses and predominate over any question affecting only individual class
5 members.

251. Plaintiffs will fairly and adequately represent the interests of the class and subclasses. Plaintiffs' claims are typical of those of the class and subclasses. Plaintiffs' interests are fully aligned with those of the class and subclasses. And Plaintiffs have retained counsel experienced and skilled in complex class action litigation.

253. Plaintiffs know of no difficulty likely to be encountered in the management that would preclude its maintenance as a class action.

254. Plaintiffs reallege all allegations.

1 255. Section 1689.2 of the California Civil Code provides:

2 A participant in an endless chain scheme, as defined in Section 327 of
3 the Penal Code, may rescind the contract upon which the scheme is
4 based, and may recover all consideration paid pursuant to the scheme,
5 less any amounts paid or consideration provided to the participant
6 pursuant to the scheme.

7 256. Herbalife is operating an endless chain scheme.

8 257. Plaintiffs and the class have suffered an injury in fact and have lost
9 money or property because of Herbalife's operation of an endless chain, business
10 acts, omissions, and practices.

11 258. Plaintiffs and the class are entitled to:

- 12 a. rescind the contract upon which the scheme is based and recover all
13 consideration paid under the scheme, less any amounts paid or
14 consideration provided to the participant under the scheme;
15 b. restitution, compensatory and consequential damages (where not
16 inconsistent with their request for rescission or restitution); and
17 c. attorneys' fees, costs, pre- and post-judgment interest.

18 **SECOND CLAIM FOR RELIEF**

19 **(Unfair and Deceptive Practices Claims Under**

20 **Cal. Bus. & Prof. Code § 17200, *et seq.*)**

21 **(On Behalf of the Class, the Pre-February 2013 Statement of Average Gross**

22 **Compensation Subclass, and the**

23 **Packaging & Handling and FedEx Freight Subclass)**

24 **Against All Defendants**

25 259. Plaintiffs reallege all allegations.

26 260. All claims brought under this Second Cause of action that refer or
27 relate to the unlawful, fraudulent or unfair "endless chain" of Defendants are
28 brought on behalf of Plaintiffs and the Class.

261. All claims brought under this Second Cause of Action that refer or relate to the unlawful, fraudulent or unfair pre-February 2013 Statements of Average Gross Compensation and the touted Herbalife “business opportunity” are brought on behalf of Plaintiffs and the Pre-February 2013 Statement of Average Gross Compensation Subclass.

262. All claims brought under this Second Cause of Action that refer or relate to the unlawful, fraudulent or unfair “Packaging and Handling” or FedEx freight fees before April 14, 2013 are brought on behalf of Plaintiffs and the Packaging & Handling and “Freight Prepaid” to FedEx Shipping Subclass.

263. Herbalife has engaged in constant and continuous unlawful, fraudulent and unfair business acts or practices, and unfair, deceptive, false and misleading advertising within the meaning of the California Business and Professions Code § 17200, *et seq.* The acts or practices alleged constitute a pattern of behavior, pursued as a wrongful business practice that has victimized and continues to victimize thousands of consumers.

The Herbalife Sales and Marketing Plan Is Unlawful

264. Under California Business and Professions Code § 17200, an “unlawful” business practice is one that violates California law.

265. Herbalife’s business practices are unlawful under § 17200 because they constitute an illegal “endless chain” as defined under, and prohibited by, California Penal Code § 327.

266. Herbalife utilizes its illegal “endless chain” with the intent, directly or indirectly, to dispose of property in Herbalife products and to convince distributors to recruit others to do the same.

267. Herbalife’s business practices are unlawful §17200 because they violate §17500 *et seq.*, as alleged in the Third Cause of Action.

The Herbalife Sales and Marketing Plan Is Fraudulent

1 268. Under California Business and Professions Code § 17200, a
2 “fraudulent” business practice is one that is likely to deceive the public.

3 269. Herbalife’s business practices are fraudulent in four separately
4 actionable ways: (1) Herbalife’s illegal and deceptive “endless chain;” (2) the
5 touted, yet non-existent, Herbalife “business opportunity” for everyone, including
6 but not limited to Herbalife’s massive advertising campaign and the misleading
7 Statements of Average Gross Compensation; (3) the “Packaging and Handling”
8 fees that actually were secret profit generators untied to, and undetermined by,
9 Defendants’ actual packaging and handling related costs; and (4) alleged FedEx
10 freight fees that, in fact, were not a direct pass through of freight charges paid by
11 Herbalife to FedEx but were secretly and substantially marked-up by Herbalife to
12 generate more profits.

13 The Fraudulent “Endless Chain”

14 270. First, as detailed herein, Defendants promoted participation in the
15 Herbalife endless chain, which has a compensation program based on payments to
16 participants for the purchase of product by participants, not the retail sale of
17 products or services.

18 271. Herbalife has made numerous misleading representations about the
19 business opportunity of Herbalife and the income that a recruit or a distributor can
20 realize by becoming a distributor and participating in the scheme.

21 272. Herbalife knew, or should have known, that the representations about
22 the business opportunity of Herbalife were misleading in nature.

23 273. As a direct result of Herbalife’s fraudulent representations and
24 omissions regarding the Herbalife endless chain described herein, Herbalife
25 wrongly acquired money from Plaintiffs and the members of the classes.

26 The Fraudulent “Business Opportunity” and Statements of Average Compensation

27 274. Second, Herbalife touted, in numerous different ways as part of a
28 massive advertising campaign, a “business opportunity,” which Herbalife also

1 repeatedly and in many ways represented, among other things, as being “for
2 everyone” and allowing “full time” or “part time” opportunities.

3 275. The massive advertising campaign included among other things, the
4 IBP or mini-IBP, the magazine *Herbalife Today*, emails, websites, presentations
5 by Herbalife and the Beneficiaries and Promoters, training, word of mouth among
6 distributors, and events.

7 276. As part of this campaign and a further inducement to potential
8 distributors, prior to February 2013, Herbalife made and disseminated Statements
9 of Average Gross Compensation that further misled the public, among other
10 things: (1) by using cryptic and technical terms known to Herbalife but not to the
11 general public or to those exploring the claimed “business opportunity,” (2) by
12 highlighting the “winners,” i.e., those that received compensation from Herbalife,
13 and the average gross compensation paid by Herbalife to those winners, (3) by
14 failing to disclose the actual number of “winners” as compared to the number of
15 distributors who received no compensation from Herbalife (i.e., the “losers”); and
16 (4) by downplaying and omitting the risks and costs involved in starting an
17 Herbalife distributorship and succeeding in such a distributorship.

18 277. In reality, the touted “business opportunity” was only for a select
19 few. As disclosed for the first time in the 2013 Statement, 436,591 distributors (or
20 approximately 87.9% of all distributors) received no payments from Herbalife in
21 2012, and another 39,151 (or approximately 8.4% of all distributors) received an
22 average of only \$292 from Herbalife during the entire year. And these numbers
23 did not include expenses incurred by distributors in the operation or promotion of
24 their businesses, meaning there were likely more net losers who made no profit at
25 all.

26 278. Herbalife knew, or should have known, that the selective information
27 presented to distributors in the 2008-2011 Statements of Average Gross
28 Compensation and its massive adverting campaign during that time frame touting

1 its purported “business opportunity” was likely to mislead the public and did in
2 fact mislead the public into believing there was a legitimate “business
3 opportunity” in which distributors, or a large portion of them, could make money
4 in either a full or part time capacity. In fact, however, there was no such “business
5 opportunity,” except for a very select few.

6 279. As a direct result of Herbalife’s fraudulent representations and
7 omissions regarding the 2008-2011 Statements of Average Gross Compensation
8 and the massive advertng campaign during that time frame and thereafter touting
9 Herbalife’s purported “business opportunity” described herein, Herbalife wrongly
10 acquired money from Plaintiffs and the members of the classes.

11 The Fraudulent “Packaging and Handling” Fees

12 280. Prior to April 14, 2013, Plaintiffs and the class purchased Herbalife
13 products and were charged a 7% “Packaging and Handling” fee based on the SRP
14 of the products purchased.

15 281. Although Herbalife represented to its distributors that the “Packaging
16 and Handling” fees were designed to recover “a great deal of administrative time
17 and labor [related to] . . . processing, handling and marketing,” on information and
18 belief, Herbalife set the fees at 7% of product SRP without first doing any analysis
19 of such costs in relation to product SRPs or revenues from product sales. In other
20 words, Herbalife set the amount of these “Packaging and Handling” fees based on
21 what it believed distributors would pay without objection and not in relation to
22 any study or analysis of its administrative time and labor related to processing,
23 handling and marketing, as represented.

24 282. Plaintiff is informed and believes that Herbalife’s actual “packaging
25 and handling” costs are far lower than the revenues that Herbalife received from
26 its “Packaging and Handling” fees and thus that these fees were secret profit
27 generators as opposed to specific fees tied to, or at least set in relation to, specific
28 costs, as represented.

1 283. Herbalife knew, or should have known, that the misrepresentations
2 and omissions about the “Packaging and Handling” fees were likely to mislead the
3 public and its distributors.

4 284. As a direct result of Herbalife’s fraudulent representations and
5 omissions regarding the purported “Packaging and Handling” fees described
6 herein, Herbalife wrongly acquired money from Plaintiffs and the members of the
7 classes.

8 The Fraudulent FedEx Freight Fees

9 285. Fourth, from April 2009 up to at least April 14, 2013, Plaintiffs
10 purchased Herbalife products and were charged a supposedly FedEx freight fee
11 that was based on the SRP of a product.

12 286. Herbalife told its distributors, among other things, that “[o]rders
13 shipped via Fed Ex, Herbalife’s most popular freight service, are shipped freight
14 prepaid,” that “[a]ll other freight service are shipped freight collect,” and that
15 “[w]hen you request FedEx as the method of shipment on an order, your delivery
16 and freight will be calculated as indicated in the ground chart.”

17 287. “Freight prepaid” is a commonly known and used shipping term that
18 means the seller of goods pays the shipper’s freight charges.

19 288. Also, Herbalife’s various product order forms during this time frame
20 described product shipping as occurring through “FedEx Ground,” “FedEx – 2
21 Day” and “FedEx – 1 Day” and set forth various percentage fees based on which
22 method was chosen.

23 289. Herbalife’s disclosures, in its IBPs and on its various product forms,
24 represented to the public and Herbalife’s distributors that the FedEx freight
25 charges were a direct pass through of the actual freight costs that Herbalife paid to
26 FedEx to deliver goods to distributors.

1 290. Nowhere did Herbalife state or imply that it would be marking-up or
2 otherwise inflating the freight costs it paid to FedEx to ship products to
3 distributors.

4 291. Instead, all of Herbalife's disclosures implied a direct pass through of
5 third party FedEx charges when a distributor chose Herbalife's "freight prepaid"
6 to FedEx method and related charges.

7 292. Because of the representations and omissions of Herbalife, Plaintiffs
8 purchased Herbalife products, chose Herbalife's FedEx method of delivery and
9 were misled into not even exploring their "freight collect" options.

10 293. On information and belief, there were alternative "freight collect"
11 shipping options that would have cost less than Herbalife's FedEx freight fees.

12 294. Furthermore, Plaintiffs are informed and believe that Herbalife's
13 claimed FedEx freight fees were not actually the "freight prepaid" by Herbalife to
14 FedEx and were not even calculated according to the formulas disclosed to
15 distributors on the product order forms.

16 295. Instead, Plaintiffs are informed and believe that Herbalife had
17 different agreements with FedEx for lower freight costs and that the actual FedEx
18 freight costs incurred by Herbalife were substantially less than the revenues
19 Herbalife received from the FedEx freight fees charged to its distributors.

20 296. As a result, Plaintiffs and the class were misled into paying, and did
21 in fact pay, bogus and inflated FedEx freight fees that were a secret profit
22 generator for Herbalife.

23 297. Herbalife knew, or should have known, that its FedEx freight
24 disclosures were untrue and misleading in that they misrepresented the freight fees
25 as directly passing through the actual "freight prepaid" costs of Herbalife to a
26 third party, FedEx, while Plaintiffs and the class were unknowingly being
27 charged, and paying, separate and undisclosed charges to Defendants.
28

1 298. As a direct result of Herbalife's fraudulent representations and
2 omissions regarding the "FedEx freight fees described herein, Herbalife wrongly
3 acquired money from Plaintiffs and the members of the classes.

4 Standing, Reliance and Materiality

5 299. The named Plaintiffs have standing to bring these Section 17200
6 claims under the fraudulent prong and can demonstrate actual reliance on the
7 alleged fraudulent conduct.

8 300. For instance, Plaintiffs received the IBP or mini-IBP, which
9 promoted the Herbalife Scheme and claimed "business opportunity" and
10 contained material false representations regarding the success distributors could
11 achieve through Herbalife by purchasing products and recruiting others to do the
12 same. Because of their receipt of the IBP or mini-IBP, and the representations
13 contained therein, Plaintiffs did not return the IBP for a refund, signed up with
14 Herbalife, purchased Herbalife products, did not immediately return those
15 products, and attempted to and recruited others to do the same.

16 301. The IBP or mini-IBP was sent by Herbalife with the purpose and
17 intent of promoting Herbalife's illegal and deceptive scheme and claimed
18 "business opportunity." Plaintiffs received the IBP or mini-IBP, which promoted
19 the Herbalife "business opportunity." Book 4 of the IBP and mini-IBP the Sales
20 and Marketing Plan contained a "Statement of Average Gross Compensation of
21 U.S. Supervisors," referenced above, which contained deceptive and misleading
22 information regarding the likelihood of success in becoming a Supervisor as well
23 as the average earnings of distributors and the amount of product revenues that are
24 paid out by Herbalife to distributors in the form of Wholesale Profits, Royalty and
25 bonus incomes and incentives. Because of their receipt of the IBP or mini-IBP,
26 and the representations contained in the "Statement of Average Gross
27 Compensation of U.S. Supervisors," Plaintiffs reasonably believed they could
28 succeed in the "business opportunity," did not return the IBP or mini-IBP for a

1 refund, purchased Herbalife products and did not immediately return them, signed
2 up as Herbalife distributors, and attempted to and recruited others to do the same.

3 302. There were other representations made to distributors as part of the
4 massive advertising campaign regarding the claimed “business opportunity,” on
5 which Plaintiffs or some of them, reasonably believed the representations they
6 could succeed in the “business opportunity,” did not return the IBP or mini-IBP for
7 a refund, purchased Herbalife products and did not immediately return them,
8 signed up as Herbalife distributors, and attempted to and recruited others to do the
9 same. These other representations include, but are not limited to the following:

- 10 a. The *Herbalife Today* magazine featuring the “Royalty Achievers”
11 “President’s Team,” “Millionaire Team,” and “Lifetime Achievers,”
12 including members of the Beneficiaries and Promoters, which
13 promoted Herbalife and contained material false representations
14 regarding the “business opportunity” and the success that a
15 distributor could achieve through Herbalife by purchasing products
16 and recruiting others to do the same.
- 17 b. Emails from Herbalife that promoted Herbalife and contained
18 material false representations regarding the success that a distributor
19 could achieve through Herbalife by purchasing products and
20 recruiting others to do the same.
- 21 c. Websites, such as www.herbalife.com,
22 <https://www.myherbalife.com/>, and <http://www.herbalifemail.com/>,
23 which promoted the fraudulent scheme through videos of
24 Beneficiaries and Promoters containing material false representations
25 regarding the “business opportunity” available to distributors and the
26 wealth that a distributor could get by agreeing to become an
27 Herbalife distributor.
28

- d. Presentations by Herbalife distributors, such as the one Bostick received in the Internet Business Starter Pack, which contained material false representations regarding the “business opportunity” and the success that a distributor could get through Herbalife by purchasing products and recruiting others to do the same.
- e. Presentations by Herbalife, including the presentations described in this complaint, which contained material false representations regarding the “business opportunity” and the success that a distributor could get through Herbalife by purchasing products and recruiting others to do the same.
- f. Training and events, such as the Extravaganza as described in this complaint, where Herbalife distributors made material false representations regarding the “business opportunity” and the success that a distributor could get through Herbalife by purchasing products and recruiting others to do the same.

303. Plaintiffs and the class also purchased Herbalife products and were charged 7% “Packaging and Handling” fees that appeared to be designed to recoup “packaging and handling” costs and also were described elsewhere as covering administrative time and labor related to processing, handling and marketing.

Plaintiffs and the class relied upon these representations and paid the “Packaging and Handling” fees without objection, believing the fees were recovering actual costs when in fact they were secretly generating additional profits for Herbalife.

304. Plaintiffs and the class also purchased Herbalife products and were charged FedEx freight fees that implied a direct pass through of shipping costs paid to a third party, FedEx, when in fact they were not direct pass through charges and were instead secret, undisclosed profit generators. The class relied upon these representations and paid the FedEx freight fees without objection, believing they

1 were simply paying the actual shipping costs charged by FedEx, when they were
2 not.

3 305. To the extent proof of reliance is required of Plaintiffs, Herbalife and
4 the Beneficiaries and Promoters knew that Plaintiffs and the class would
5 reasonably rely on their representations and omissions, which would cause the
6 Plaintiffs and the class joining the fraudulent endless chain scheme and purchasing
7 the products, and Plaintiffs did in fact reasonably rely upon such representations
8 and omissions.

9 306. Indeed, had Plaintiffs and the class known that Herbalife and its
10 Beneficiaries and Promoters were promoting an endless chain, they would not
11 have become Herbalife distributors in the first place and, if learned after becoming
12 a distributor, they would not have purchased Herbalife products thereafter.

13 307. Had Plaintiffs and the class known that Herbalife was promoting a
14 “business opportunity” that did not exist except for a select few, they would not
15 have become Herbalife distributors in the first place and, if learned after becoming
16 a distributor, they would not have purchased Herbalife products thereafter.

17 308. And had Plaintiffs and the class known that the “Packaging and
18 Handling” fees were not calculated or set in relation to actual packaging and
19 handling costs and instead were secret profit generators, they would not have
20 become Herbalife distributors in the first place, would not have purchased
21 Herbalife products, or would have contacted Herbalife to object and attempt to
22 avoid paying the fees.

23 309. Regarding the FedEx freight fees, had Plaintiffs and the class known
24 that Herbalife was not directly passing through such fees to the shipper, Fed Ex,
25 they could have and would have explored freight collect options that could have
26 saved them money on shipping, or they could have picked up the products in
27 person, or they could have objected and tried to negotiate the actual shipping fees
28 with Herbalife.

310. Finally, the fraudulent acts, representations and omissions described herein were material not only to Plaintiffs and the class (as described in this complaint), but also to reasonable persons. For instance, regarding the alleged “business opportunity” and representations in, and omissions from, the 2008 to 2011 Statements of Average Gross Compensation, and on information and belief, a large percentage of individuals who signed up as Herbalife distributors during this time frame expected that they could and would receive annual compensation at the approximate level of the “average earnings compensation,” in total, disclosed in the Statements of Average Gross Compensation. Unfortunately, no such large percentage actually could or did earn such an amount.

The Herbalife Sales and Marketing Plan Is Unfair

311. Under California Business and Professions Code § 17200, a business practice is “unfair” if it violates established public policy or if it is immoral, unethical, oppressive or unscrupulous and causes injury which outweighs its benefits.

312. For the reasons set forth herein and above, Herbalife’s promotion and operation of an unlawful and fraudulent endless chain, and its fraudulent representations and omissions regarding its purported “business opportunity,” “Packaging and Handling” fees, and FedEx freight fees are also unethical, oppressive, and unscrupulous in that Herbalife is and has been duping Plaintiffs and the class out of billions, or at least hundreds of millions, of dollars.

313. Herbalife’s actions have few, if any, benefits. Thus, the injury caused to Plaintiffs and the class easily and dramatically outweighs the benefits, if any.

314. Defendants should be made to disgorge all ill-gotten gains and return to Plaintiffs and the class all wrongfully taken amounts.

315. Finally, Defendants’ unlawful, fraudulent and unfair acts and omissions will not be completely and finally stopped without orders of an injunctive nature. Under California Business and Professions Code section 17203,

1 Plaintiffs and the class seek a judicial order of an equitable nature against all
2 Defendants, including, but not limited to, an order declaring such practices as
3 complained of to be unlawful, fraudulent and unfair, and enjoining them from
4 further undertaking any of the unlawful, fraudulent and unfair acts or omissions
5 described herein.

6 **THIRD CLAIM FOR RELIEF**

7 **False Advertising**

8 **(California Business and Professions Code § 17500, *et seq.*)**

9 **(On Behalf of the Class, the Pre-February 2013 Statement of Average Gross**
10 **Compensation Subclass, and the Packaging & Handling and FedEx Freight**
11 **Subclass)**

12 **Against All Defendants**

13 316. Plaintiffs reallege all allegations.

14 317. All claims brought under this Third Claim for Relief that refer or
15 relate to the false, untrue, fraudulent or misleading endless chain of Defendants
16 are brought on behalf of Plaintiffs and the Class.

17 318. All claims brought under this Third Cause of Action that refer or
18 relate to the false, untrue, fraudulent or misleading pre-February 2013 Statements
19 of Average Gross Compensation and the touted Herbalife “business opportunity”
20 are brought on behalf of Plaintiffs and the Pre-February 2013 Statement of
21 Average Gross Compensation Subclass.

22 319. All claims brought under this Third Claim for Relief that refer or
23 relate to the false, untrue, fraudulent or misleading “Packaging and Handling” or
24 FedEx freight fees before April 14, 2013 are brought on behalf of Plaintiffs and
25 the Packaging & Handling and FedEx Freight Subclass.

26 320. Defendants’ business acts, false advertisements and materially
27 misleading omissions constitute false advertising, in violation of the California
28 Business and Professions Code § 17500, *et seq.*

321. Defendants engaged in false, unfair and misleading business practices, consisting of false advertising and materially misleading omissions regarding the purported “business opportunity,” likely to deceive the public and include, but are not limited to, the items set forth above. Herbalife knew, or should have known, that the representations about the business opportunity of Herbalife were misleading in nature.

322. Defendants’ marketing and promotion of the “Packaging and Handling” that appeared to be designed to recoup “packaging and handling” costs, but, in fact, were secret profit generators for Herbalife, as set forth above. Defendants knew or should have known, in exercising reasonable care, that the statements they were making were untrue or misleading and deceived members of the public. Defendants knew or should have known, in exercising reasonable care, that distributors, including Plaintiffs, would rely, and relied on Defendants’ misrepresentations and omissions.

323. Defendants’ marketing and promotion of the FedEx freight fees that implied a direct pass through of shipping costs paid to a third party, FedEx, when in fact they were not direct pass through charges and were instead secret, undisclosed profit generators, constitutes false advertising likely to deceive the public and include, but are not limited to, the items set forth above. Defendants knew or should have known, in exercising reasonable care, that the statements they were making were untrue or misleading and deceived members of the public. Defendants knew or should have known, in exercising reasonable care, that distributors, including Plaintiffs, would rely, and relied on Defendants’ misrepresentations and omissions.

324. Because of Defendants’ untrue and/or misleading representations, Defendants wrongfully acquired money from Plaintiffs and the class members to which it was not entitled. The Court should order Defendants to disgorge, for the benefit of Plaintiffs and all other Herbalife distributors in the class who signed a

Distributor Agreement with Herbalife governed by California law their profits and compensation and/or make restitution to Plaintiffs and the class.

325. Under California Business and Professions Code Section 17535, Plaintiffs and the class seek a judicial order directing Defendants to cease and desist all false advertising related to the Defendants' illegal endless chain scheme, and "Packaging and Handling" fee, and such other injunctive relief as the Court finds just and appropriate.

326. Because of Defendants' untrue and/or misleading representations, Defendants wrongfully acquired money from Plaintiffs and the class members to which it was not entitled. The Court should order Defendants to disgorge, for the benefit of Plaintiffs and all other Herbalife distributors in the class who signed a Distributor Agreement with Herbalife governed by California law their profits and compensation and/or make restitution to Plaintiffs and the class.

327. Under California Business and Professions Code Section 17535, Plaintiffs and the class seek a judicial order directing Defendants to cease and desist from all false advertising related to the Defendants' illegal e scheme, and "Packaging and Handling" fee, and such other injunctive relief as the Court finds just and appropriate.

PRAYER FOR RELIEF

The named Plaintiffs and the Plaintiff class and subclasses request the following relief:

- a. Certification of the class and subclasses;
- b. A jury trial and judgment against Defendants;
- c. Rescission of the agreements upon which the scheme is based, and recovery of all consideration paid pursuant to the scheme, less any amounts paid or consideration provided to the participant pursuant to the scheme;

d. Damages for the financial losses incurred by Plaintiffs and by the class and subclasses because of the Herbalife Defendants' conduct and for injury to their business and property;

e. Restitution and disgorgement of monies;

f. Temporary and permanent injunctive relief enjoining Herbalife from paying its Distributors recruiting rewards that are unrelated to retail sales to ultimate users and from further unfair, unlawful, fraudulent and/or deceptive acts;

g. The cost of suit including reasonable attorneys' fees under California Code of Civil Procedure § 1021.5, Civil Code § 1689.2, and otherwise by law.

h. For damages in an amount yet to be ascertained as allowed by law; and

i. For such other damages, relief and pre- and post-judgment interest as the Court may deem just and proper.

DATED: June 9, 2014

FABIAN & CLENDENIN, P.C.
FOLEY BEZEK BEHLE & CURTIS, LLP

/s/ Philip D. Dracht

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Scott M. Petersen (Admitted *Pro Hac*)
Jason W. Hardin (Admitted *Pro Hac*)

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Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure.

1 DATED: June 9, 2014

FABIAN & CLENDENIN, P.C.
FOLEY BEZEK BEHLE & CURTIS, LLP

2
3
4 /s/ Philip D. Dracht

5 Philip D. Dracht
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Exhibit 3

Counsel is listed on the following page

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

DANA BOSTICK, *et al.*,

Plaintiffs,

vs.

HERBALIFE INTERNATIONAL OF
AMERICA, INC., *et al.*,

Defendants.

CASE NO. 2:13-cv-02488-BRO-RZ

STIPULATION OF SETTLEMENT

Assigned to Hon. Beverly Reid
O'Connell

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*Attorneys for Defendants Herbalife
International of America, Inc.; Herbalife
International, Inc.; and Herbalife Ltd.*

*Attorneys for Plaintiffs Dana Bostick,
Anita Vasko, Judi Trotter, Beverly
Molnar, and Chester Cote*

1 This Stipulation of Settlement and attached exhibits (the “Settlement
2 Agreement”) dated as of October 31, 2014, is made by and among the following
3 Settling Parties: on the one hand, Plaintiffs Dana Bostick, Anita Vasko, Judi Trotter,
4 Beverly Molnar, and Chester Cote on behalf of themselves, and on behalf of each of
5 the Settlement Class Members (as defined herein), by and through Plaintiffs’
6 Counsel; and on the other, Defendants Herbalife International of America, Inc.,
7 Herbalife International, Inc., and Herbalife Ltd. (collectively, “Herbalife”), by and
8 through their counsel. This Settlement Agreement is intended by the Settling Parties
9 to resolve, discharge and settle the Released Claims (as defined herein), upon and
10 subject to the terms and conditions of this Settlement Agreement.

11 **1. DEFINITIONS**

12 In addition to the foregoing defined terms, the following terms shall have the
13 meanings as set forth below:

14 1.1 “Action” means the action filed in the United States District Court for
15 the Central District of California entitled *Dana Bostick, et al. v. Herbalife*
16 *International of America, Inc., et al.*, Case No. 2:13-cv-02488-BRO-RZ, including
17 all pleadings on file in that action.

18 1.2 “Authorized Claimant” means a Class Member who submits a timely
19 and valid Claim Form to the Claims Administrator or is otherwise authorized to
20 receive benefits under this Settlement Agreement.

21 1.3 “Claims Administrator” means KCC LLC, who shall be subject to and
22 comply with this Settlement Agreement and the terms of the Claims Protocol
23 attached hereto as Exhibit 3.

24 1.4 “Plaintiffs’ Counsel” means the law firms Fabian & Clendenin, P.C.
25 and Foley Bezek Behle & Curtis, LLP.

26 1.5 “Class Period” means the period beginning April 1, 2009, through and
27 including the date the Preliminary Approval Order is entered.

28 1.6 “Court” means the United States District Court for the Central District

1 of California.

2 1.7 “Effective Date” means the first date after which all of the following
3 events and conditions have been met or have occurred:

4 1.7.1 The Settlement Agreement is executed and delivered by/to
5 all Parties and approved by the Court;

6 1.7.2 Entry of the Final Judgment and Order Approving Settlement
7 (“Final Judgment”);

8 1.7.3 The Final Judgment becomes “Final.” “Final” means the
9 occurrence of any of the following: (a) final affirmance on an appeal of the Final
10 Judgment, the expiration of the time for a petition for review of the Final Judgment
11 and, if the petition is granted, final affirmance of the Final Judgment following
12 review pursuant to that grant; (b) final dismissal of any appeal from the Final
13 Judgment or the final dismissal of any proceeding to review the Final Judgment; or
14 (c) if no appeal is filed, the expiration of the time for the filing or noticing of any
15 appeal from the Court’s Final Judgment. If the Final Judgment is set aside,
16 materially modified, vacated or reversed by the Court or by an appellate court, and
17 is not fully reinstated on further appeal, then the Final Judgment does not become
18 “Final” and the Effective Date cannot occur.

19 1.7.4 Plaintiffs and Herbalife shall have the option to elect to
20 waive the failure, in whole or in part, of any of the conditions set forth in
21 Subsections 1.7.1-1.7.3. If Plaintiffs or Herbalife elects to waive the failure, in
22 whole or in part, of such condition, Plaintiffs or Herbalife shall file a written notice
23 of waiver with the Court within ten (10) days after they become aware of the failure
24 of such condition. If Plaintiffs or Herbalife waive the failure, in whole or in part, of
25 any condition in Subsections 1.7.1-1.7.3, then the Effective Date will occur without
26 satisfaction of that condition.

27 1.8 “Escrow Agent” means KCC LLC.

28 1.9 “Notice” means the notice provided for in Section 7 and substantially

1 in the form attached hereto as Exhibit 1.

2 1.10 "Person" means an Herbalife member or distributor in his or her
3 individual capacity; any corporation, limited liability company, partnership, limited
4 partnership, association, joint stock company, estate, legal representative, trust,
5 unincorporated association, or any business or legal entity through which he or she
6 has conducted or conducts an Herbalife distributorship; and their spouses, heirs,
7 predecessors, successors, representatives, alter egos, or assigns.

8 1.11 "Preliminary Approval Order" means the order to be entered by the
9 Court, preliminarily approving the Settlement Agreement, certifying the Settlement
10 Class for settlement purposes only, approving the Notice of Proposed Settlement,
11 approving the Summary Notice, and setting the Settlement Hearing, as provided for
12 in Section 7.

13 1.12 "Settlement Agreement" means this Stipulation of Settlement,
14 including all attached exhibits.

15 1.13 "Settlement Class" means all persons who are or were Herbalife
16 members or distributors in the United States at any time during the Class Period.

17 1.13.1 Excluded from the Settlement Class are the Defendants, their
18 employees, family members, and any member who has been a member of
19 Herbalife's President's Team, Founder's Circle, Chairman's Club, Millionaire
20 Team, or GET Team.

21 1.13.2 Also excluded from the Rule 23(b)(3) class are all Herbalife
22 members or distributors who have agreed to be subject to the arbitration provisions
23 of the Arbitration Agreement for Disputes Between Members and Herbalife
24 contained in the Member Application Agreement revised during or after September
25 2013.

26 1.14 "Settlement Class Member" means a Person who fits within the
27 definition of the Settlement Class and who has not validly and timely requested
28 exclusion from the Settlement Class, as provided in Section 10.

1 1.15 “Settlement Hearing” means the hearing to determine whether this
2 Settlement Agreement should be finally approved by the Court, as provided for in
3 Section 7.

4 1.16 “Settling Parties” means Herbalife and each of the Plaintiffs on behalf
5 of themselves and each of the Settlement Class Members.

6 1.17 “Summary Notice” means the written notice provided for in Section 7
7 and substantially in the form attached hereto as Exhibit 2.

8 1.18 The word “or” means and/or.

9 1.19 The plural includes the singular and vice-versa.

10 **2. LITIGATION BACKGROUND**

11 2.1 Original Complaint. On April 8, 2013, Plaintiff Dana Bostick, on
12 behalf of himself and a putative class of “others similarly situated,” filed this Action
13 in the United States District Court for the Central District California, naming as
14 defendants Herbalife International of America, Inc.; Herbalife International, Inc.;
15 and Herbalife Ltd., alleging the following claims for relief: (1) violations of
16 California’s endless chain scheme law under California Penal Code Section 327 and
17 California Civil Code Section 1689.2; (2) violations of the Racketeer Influenced and
18 Corrupt Organizations Act (“RICO”) (18 U.S.C. §§ 1962(a), (c), and (d)); (3) unfair
19 and deceptive business practices under California Business and Professions Code
20 Section 17200, *et seq.*; and (4) false advertising under California Business and
21 Professions Code Section 17500, *et seq.* The complaint sought, among other things,
22 damages for the financial losses incurred by Bostick and the class; general,
23 compensatory, and exemplary damages; restitution and disgorgement; temporary
24 and permanent injunctive relief; costs; reasonable attorneys’ fees; pre- and post-
25 judgment interest; and other damages the Court may deem just and proper.

26 2.2 Motion to Dismiss. On May 30, 2013, Defendants moved to dismiss
27 the complaint. (Dkt. No. 22.). On October 11, 2013, the Court denied Defendants’
28 motion to dismiss. (Dkt. No. 40).

1 2.3 First Amended Complaint. On July 2, 2014, the Court granted the
2 parties' Stipulation to File First Amended Complaint. (Dkt. No. 76). The First
3 Amended Complaint, filed on July 7, 2014, added Anita Vasko, Judi Trotter,
4 Beverly Molnar, and Chester Cote as plaintiffs. (Dkt. No. 78). The First Amended
5 Complaint also removed Plaintiffs' RICO causes of action. On August 15, 2014, the
6 parties sought a 63 day extension of certain case management deadlines and
7 Defendants' time to respond to Plaintiffs' First Amended Complaint. (Dkt. No. 82).
8 The Court granted this stipulation on August 20, 2014. (Dkt. No. 83).

9 **3. BENEFITS OF THE SETTLEMENT**

10 3.1 Diligence of Plaintiffs' Counsel. Plaintiffs are represented by
11 experienced counsel who have conducted discovery, both formal and informal, as
12 well as investigation prior to and throughout the prosecution of the Action. The
13 discovery and investigation have included (i) review of over 148,000 pages of
14 internal Herbalife documents; (ii) depositions of Herbalife pursuant to Federal Rule
15 of Civil Procedure 30(b)(6); (iii) analysis of several gigabytes of confidential
16 Herbalife database productions; (iv) review of documents provided by former
17 Herbalife members or distributors and other persons with relevant information; (v)
18 review of written discovery responses provided by Herbalife through the discovery
19 process; (vi) review of Herbalife's public materials and other publicly available
20 documents; (vii) interviews with former Herbalife members or distributors; (viii)
21 consultation with experts; (ix) research of the applicable law with respect to the
22 claims asserted in the complaints and the potential defenses thereto. Joint
23 Declaration of Thomas J. Foley, Jr. and Scott M. Petersen, dated October 31, 2014,
24 filed concurrently herewith, details such diligence.

25 3.2 Benefits to Settlement Class. Plaintiffs' Counsel have analyzed the
26 benefits to be obtained under the terms of the proposed Settlement and have
27 considered the costs, risks, and delays associated with the continued prosecution of
28 the Action and likely appeals, as well as the merits of the defenses asserted by

1 Herbalife. Plaintiffs' Counsel believe that, in consideration of all of the
2 circumstances and after prolonged, serious, and contentious arms-length
3 negotiations in mediation with Herbalife, the proposed Settlement is fair,
4 reasonable, adequate and in the best interests of the Settlement Class. In making
5 these statements and submitting a declaration filed concurrently herewith, Plaintiffs'
6 Counsel are not making any admission of fact or law in regard to liability, fault
7 allocation, or damages with respect to the Action.

8 3.3 Benefits to Herbalife. Herbalife has concluded that it is in its best
9 interests that the Action be settled on the terms embodied in the Settlement
10 Agreement. Herbalife reached that conclusion after: (1) analyzing the factual and
11 legal issues in the Action and considering the uncertainty of litigation; (2)
12 determining that further conduct of the Action through trial and any possible appeals
13 would be protracted and expensive; and (3) considering the benefits of permitting
14 Herbalife to conduct its business unhampered by the distractions of continued
15 litigation.

16 **NOW, THEREFORE, IT IS HEREBY AGREED** by and between the
17 parties, through their respective counsel, that the Action and the Released Claims be
18 finally and fully settled, compromised and released, and the Action shall be
19 dismissed on the merits with prejudice, on the terms set forth herein, as between
20 Plaintiffs and the Settlement Class Members on the one hand, and Herbalife on the
21 other.

22 **4. MONETARY RELIEF AND PRODUCT RETURN**

23 4.1 Monetary Fund. Herbalife shall establish a non-reversionary
24 "Settlement Fund" in the amount of \$15,000,000.00. This amount shall be
25 deposited into an escrow account within ten (10) business days after the Court
26 issues the Preliminary Approval Order. The Settlement Fund shall be applied: (a)
27 first, to pay the costs of notice and settlement administration, (b) second, to pay
28 Plaintiffs' Counsel's attorneys' fees and expenses and any plaintiff service awards

1 in the amount awarded by the Court, (c) third, after exhausting the Product Return
2 Fund, no more than \$2,500,000 of the Settlement Fund may be applied to pay
3 Settlement Class Members who submit a valid claim for a product return, and (d)
4 fourth to pay Settlement Class Members who submit a valid claim for a cash award
5 (this final amount is the “Net Settlement Fund”). The Court shall oversee the
6 distribution of any amounts remaining in the Net Settlement Fund pursuant to the *cy*
7 *pres* doctrine to Consumer Federation of America, or such organization(s) as the
8 parties may jointly propose and the Court approves. To the extent interest is earned
9 on amounts held in escrow, it shall accrue and be payable to Herbalife, less
10 applicable taxes. The Escrow Agent, on behalf of the Settlement Class, shall be
11 responsible for all administrative, accounting, and tax compliance activities in
12 connection with this escrow account and shall comply with the provisions of the
13 escrow agreement and the Claims Protocol attached as Exhibit 3.

14 4.2 Product Return Fund. In addition to the Settlement Fund described in
15 Subsection 5.1, Herbalife shall commit resources to funding a reversionary “Product
16 Return Fund” in the amount of \$2,500,000.00. The Product Return Fund shall be
17 applied to pay Settlement Class Members who submit a valid claim for a product
18 return. The costs of return shipping for product returns shall be borne by the Product
19 Return Fund. The sum of the Product Return Fund plus the portion of the
20 Settlement Fund available for product returns as set forth in Section 5.1(c) above
21 shall be the “Net Product Return Fund.” The product return fund shall be
22 administered by Herbalife; to the extent the Product Return Fund is not fully
23 expended as set forth in Section 5.3 below, the remainder shall be returned to
24 Herbalife.

25 4.3 Product Return Claimants. Settlement Class Members may submit
26 claims to return unused and unopened products (excluding International Business
27 Packs [“IBPs”] and mini-IBPs) that were purchased more than one year prior to the
28 deadline for submitting claims forms. In exchange, Settlement Class Members shall

1 receive a Return Payment from the Net Product Return Fund. Settlement Class
2 Members submitting claims to return products are “Product Return Claimants.”

3 4.3.1 In their claim forms, Product Return Claimants shall identify
4 the (1) SKU of the product(s) to be returned, (2) estimated purchase date of the
5 product(s) to be returned, and (3) actual amount paid for each returned product (the
6 “Product Return Amount”). If the Product Return Claimant is unable to provide the
7 actual amount paid, the Product Return Claimant shall so certify and shall provide
8 an estimated payment. Assuming all other information is properly provided to the
9 Claims Administrator, the Claims Administrator shall calculate the Return Payment
10 as the lesser of the Product Return Claimant’s estimated payment or 50% of
11 Herbalife’s Suggested Retail Price for the product(s) on the purchase date.

12 4.3.2 Following the deadline for submitting claim forms, the
13 Settlement Administrator’s website shall provide Product Return Claimants with
14 notice of the amount of the proposed payment (the “Return Payment”). If the total
15 Return Payment exceeds the Net Product Return Fund, the Return Payment for each
16 Product Return Claimant shall be subject to pro rata diminution. Beginning within
17 ten (10) business days following the Settlement Administrator’s online posting of
18 notice of the Return Payment and continuing for sixty (60) days thereafter, Product
19 Return Claimants shall be permitted to return the products identified in their claim
20 forms in exchange for a Return Payment.

21 4.3.3 Herbalife shall use its current product return process to
22 retrieve or collect the product for which Product Return Claimants properly submit
23 claims, with no additional cost to the Product Return Claimants. Should any
24 product be returned by means of shipping (whether through Herbalife’s product
25 return process or otherwise), any shipping costs shall be paid by the Net Product
26 Return Fund.

27 4.4 Business Opportunity Claimants. Settlement Class Members may
28 submit claims for a cash award, as described below. Settlement Class Members